

WHY THE HOUSE IS WAITING TO HOLD ROVE IN CONTEMPT

I wanted to elaborate on what I said in yesterday's post—to talk about where I think Rove's contempt vote is going.

As I said yesterday, HJC expects that John Bates to rule on their suit pertaining to Harriet Miers and Josh Bolten sometime in August. It could be the beginning of August, it could be the end of August, but sometime in August. I know some on HJC are cautiously optimistic that Bates will give them a reasonable ruling. But, for all the reasons Kagro X lays out, I'm not.

The House Judiciary Committee subsequently filed suit in federal court, seeking an order compelling the US Attorney to proceed with the prosecution, and somehow — magically! — the case was assigned to former Whitewater Deputy Independent Counsel John D. Bates, the federal judge who dismissed the Plame lawsuit, dismissed the Cheney Energy Task Force lawsuit, upheld the validity of Bush's signature on an a bill not properly passed in the same form by both houses of Congress, and dismissed the DNC's lawsuit seeking to force the FEC to rule on John McCain's attempt to withdraw from his presidential campaign's public financing commitments.

I don't know about you, but I'm not really feeling the fear with respect to the statutory contempt thing.

Bates specializes in rulings that say (as his Plame ruling did), "I can see why you're concerned about the issue in chief, but I'm not going to rule in favor of you because of this technicality."

Now, no matter how Bates rules, that case will continue in the courts. Either the White House will appeal an adverse ruling, or Congress will, or the technicality Bates relies on will just postpone a court judgment. Nancy Pelosi said in a conference call earlier this year that she would continue to pursue this ruling in the courts even after Bush is chased out of office, because the principle is that important. So that ruling will continue.

Meanwhile, one of the most likely technicalities for Bates to fall back on in the Miers and Bolten ruling is centrally important to Rove's future. At the hearing on the suit in June, Bates asked the House Counsel specifically why he wasn't pursuing inherent contempt.

And that's why—aside from Rove's general asshole nature—HJC had Rove's contempt vote yesterday and why they're not pushing through a vote in the House before the recess—because the Bates ruling is going to affect how they respond to Rove.

If, by unlikely chance, Bates rules in favor of Congress—particularly as regards the claim to absolute immunity from showing up before Congress, then Congress can say enforcing Rove's subpoena is a slam-dunk. That's because with Rove, unlike with Miers and Bolten, **there is no question of balancing interests**. If Bates says this absolute immunity bullshit doesn't exist, then Rove's entire reason to refuse to testify has been invalidated (Miers and Bolten, on the other hand, would still have the ability to claim Executive Privilege on a question by question basis, and Congress could still contest that claim of privilege by showing their interest in oversight outweighs Bush's interest in hiding his criminal wrong-doing).

But I think a very likely possibility is that Bates will come back and say, "I don't have to rule because Congress hasn't exhausted all its means to get Miers and Bolten to testify themselves, using inherent contempt." And if that happens, just before the House returns to

vote as a body on Rove's contempt, a Bush appointee will have basically told Congress to go test drive its inherent contempt powers. If all this happens, then I expect they will vote to use inherent contempt, not statutory contempt, with Rove.

In other words, Bates' ruling—particularly if he tells the House to use inherent contempt—is going to be the force that gets all the Democrats in Congress on board to use inherent contempt with Rove.