

# BUSHCO: YOU CAN'T HAVE SCOOTER'S AND TURDBLOSSOM'S EMAILS...

...and the Court can't make us give them to you, either (h/t mc).

The Bush administration is aggressively pushing back against a federal court order instructing the most important offices in the White House to preserve all of their e-mail.

In court papers late Friday, the administration argued that a federal court has **no authority to impose such a requirement on the offices of President Bush, Vice President Cheney and the National Security Council**. The administration argued that none of the court's orders can apply to parts of the White House subject to the Presidential Records Act.

The issue arose Wednesday after U.S. District Judge Henry H. Kennedy Jr. directed the White House to issue a notice to all employees to surrender any e-mails from March 2003 to October 2005. Justice Department lawyers argued that the order applied only to White House offices subject to the Federal Records Act, prompting a quick response from U.S. Magistrate Judge John M. Facciola. Facciola said that all White House offices must be searched for e-mail. [my emphasis]

We're seriously in run-out-the-clock time here. BushCo is effectively sticking its fingers in its ears and singing "lalalala-you-can't-make-me" and assuming Justice Kennedy will either back them up—or not get around to making

them—before Tuesday.

Update: Here's the appeal. There's a lot worth reading in it. But for now, you will be amused to know that they're relying on what might politely be called the "Poppy precedent."

The bounds of the Court's jurisdiction are restricted, too, by the limitations on review of the recordkeeping practices of components governed by the PRA. The PRA accords the components governed by the PRA "virtually complete control" over their records, and "neither the Archivist, nor the Congress has the authority to veto" the EOP PRA component's disposal decisions, nor may the courts. *Armstrong v. Bush*, 924 F.2d 282, 290 (D.C. Cir. 1991).

I'm sure they weren't planning on making this Poppy precedent their last defense when they deleted all of Scooter's and Turdblossom's emails in 2005. Honest.

Two more documents. This statement, which explains where they're complying. And this declaration from Stephen Everett, the CIO of EOP, explaining that statement.

Update: What BushCo appears to be doing is to retreating to an approach they tried earlier in this case: to argue exclusively with the CREW arguments, which are more limited, and not the NSA arguments. This, even though Judge (not Justice) Kennedy has already admitted NSA's more expansive arguments pertaining to the Presidential Records Act.

Which is why an observation bmaz made is so interesting. As of right now, this White House appeal is docketed under the CREW docket (click to enlarge):



And not the NSA docket:

