

IS THE OBAMA WHITE HOUSE CAVING (AGAIN) ON PRESIDENTIAL PRIVILEGES?

I had this post mostly written as a screed against Greg Craig, who appeared to be caving again on Obama's stated principles on presidential privileges. But after checking with three data points, I'm not so sure what is going on.

I covered the first data point on Friday: John Conyers' letter, dated Friday, to Bob Luskin, refusing to give Rove yet another delay until such time as he feels the whim to testify before HJC.

I also cannot agree to your request for a delay to accommodate Mr. Rove's schedule. As you know, the deposition was originally scheduled for February 2. On January 29 I in good faith acceded to your request for a delay since you were scheduled to be out of town at the time and requested more time to prepare. I also notified your office of the new February 23 date at that time. Thus, absent an actual commitment by Mr. Rove to comply with the subpoena, I am not in a position to agree to yet a further delay. In essence, given Mr. Rove's public statements that he does not intend to comply with the subpoena, I am puzzled as to why Mr. Rove needs a mutually convenient date to appear.

The letter suggested that as of Friday, Conyers was unwilling to wait until the Appeals Court ruled on the Miers/Bolten (with Rove added) suit—he wanted to get a date with Rove for a week from Monday.

But then there was this report, revealing that

Greg Craig is trying to make a deal.

White House lawyers and representatives for former president George W. Bush are engaged in discussions that could clear a path for congressional testimony by onetime Bush aide Karl Rove, three sources familiar with the talks said yesterday.

[snip]

"The president is very sympathetic to those who want to find out what happened," Craig said in a statement yesterday. "But he is also mindful as president of the United States not to do anything that would undermine or weaken the institution of the presidency. So, for that reason, he is urging both sides of this to settle."

There's a CBS report on this statement—but the reporter seems to be confused as much by the underlying issues as by Craig's ambivalence. Both, however, suggest that Craig is granting Rove's position with entirely too much credibility. Further, it hints that Craig might try to defend the utterly ridiculous absolute immunity claim so as to not "weaken the institution of the presidency." If that is true, then Craig apparently believes relying on a Steven Bradbury opinion—he of legal opinions that have apparently been found bogus and unethical by OPR—that contradicts even William Rehnquist's rather audacious claim is worth it to avoid "weaken[ing] the institution of the presidency." If Craig is really defending the absolute immunity claim here, he will match Alberto Gonzales' cravenness as White House Counsel.

But then there's this CQ report (h/t MadDog).

Justice Department lawyers have asked the D.C. Circuit for more time for defendants in a House Judiciary Committee lawsuit to file their opening

brief in the appellate case.

The defendants' opening brief was due Feb. 18, but they've asked the D.C. Circuit for an extension to March 4 – **in part to give negotiations** toward an out-of-court settlement a chance to bear fruit.

"Negotiations are now ongoing," Justice Department lawyers wrote in the motion, adding that "these tripartite discussions have been complicated and time-consuming," but that "the requested 14-day extension is appropriate to permit these negotiations an opportunity to succeed, potentially obviating the need for this Court to address the sensitive separation-of-powers questions presented in this appeal."

[snip]

The D.C. Circuit is likely to grant the extension, for two reasons: **House lawyers are okay with it**; and when it comes to executive-legislative disputes, courts usually do everything they can to encourage the two sides to work things out on their own. [my emphasis]

Let's work backwards here, from the news that house lawyers have agreed to the delay. That means they believe there's an upside to waiting. Partly, that suggests Craig has already endorsed conceding enough that might convince the HJC lawyers to put aside several really important principles, including the principle that aides fired by a former president over a year a half ago should not be able to blow off Congress at his whim, a principle with which even this Court is likely to agree.

CQ also suggests that Holder's DOJ asked for a delay only partly to give negotiations some time to move forward. I can't find the motion (and I'm packing up for a road trip), but I do wonder what the other reasons for the delay are. The

crappy CBS piece had said that Greg Craig was still reviewing "the question of executive privilege" (whatever that means).

A White House spokesman says the Counsel's Office is still studying the question of executive privilege.

So it may mean that Craig pushed the delay to assess how crappy Rove's claim, in particular, is here. I'm also hoping that the delay may extend long enough for the molasses-like confirmation process to get around to Dawn Johnsen, who likely would have a thing or two to say about Steven Bradbury's audacious claim of absolute immunity for fired aides of former Presidents.

In other words, we don't really know what this means until we get clarification on what other reasons Obama's DOJ asked for that delay.

But I find one thing rather interesting. Conyers wrote his letter at a time when—clearly—this negotiation was fairly well advanced. In it, he spoke with renewed vigor of contempt charges.

Finally, conducting a voluntary deposition under these circumstances could simply serve to further delay matters beyond the nearly two years I have been waiting, since the Committee could not then be in a position to utilize contempt or other enforcement mechanisms in response to any improper refusal to answer questions.

That is, Conyers spoke with some anticipation of contempt at a time when he was in deep negotiations with Obama's lawyers.

I'm trying to get some clarification on these issues. But until then, I'm not sure what to make of these negotiations.