

IM-ME-DI-ATE: ADJECTIVE (DOJ) 1. MORE THAN 2 YEARS

Goddamn did DOJ bring the stupid in their response to CREW's brief in its Cheney interview FOIA.

745 days ago, George Bush commuted Scooter Libby's sentence, thereby ensuring that Scooter Libby would not testify about whether—as all the evidence indicated—Dick Cheney had ordered him to leak Valerie Wilson's identity to Judy Miller. 745 days ago, for all intents and purposes, the investigation of Dick Cheney's involvement in outing a CIA officer ended in the dead end of Scooter Libby's successful criminal obstruction of justice.

Yet DOJ describes CREW's efforts to get Cheney's interview report via FOIA to be an attempt to get "a ruling that would make public interview reports of high ranking White House officials immediately upon the conclusion of the relevant investigation." For the whizzes in DOJ, I guess, 745 days equates to "immediate."

But that's not the only heap of stupid they bring in this filing.

Next, these whizzes argue that if DOJ turns over Cheney's interview, then senior White House officials will no longer provide criminal investigators a "full account of relevant events."

This argument, however, is ultimately immaterial because, while in some circumstances public pressure could possibly force a White House official to sit down for an interview, it cannot ensure that that official will be willing "to provide law enforcement officials with a full account of relevant events,"

Dudes! Let me tell you a secret about this case!! It ended in a successful perjury and obstruction of justice prosecution that revealed—among other things—that convicted felon Scooter Libby had worked out a cover story with Dick Cheney before Libby first testified to the FBI! Had Cheney given a "full account of relevant events," then Scooter Libby probably wouldn't have been prosecuted successfully (or, at the least, Judy Miller wouldn't have had to testify or Cheney would have been charged with obstruction himself).

Next, DOJ claims that a precedent in which the release of a summary of deliberations was found not to constitute a waiver over the source documents of that deliberation applies here, in which key source documents have already been released, but which wouldn't—DOJ argues—constitute a waiver for the interview report which is fundamentally a summary. For DOJ, a precedent finding that a summary doesn't equal source is the same as a source not equaling a summary.

The D.C. Circuit held that the release of the report did not constitute a waiver of privilege and that the White House could retain privilege over all documents that had not specifically been provided to individuals outside the government. *Id.* at 741. Similarly here, the fact that DOJ has released certain deliberative material into the public domain as part of the prosecution of I. Lewis Libby does not waive privilege over other, unreleased, documents that may contain material relating to the same deliberations.

Which is all the more stupid given that Cheney's interview report is not the deliberation itself (that is, it's not like he was discussing potential policies that Fitz ought to introduce into investigating Vice Presidents), and—more importantly—the content of **this very interview** was already released by Dick Cheney's lawyer!

DOJ is effectively arguing that the precedent finding that a summary does not equal source is the same as summaryA does not equal summaryA.

Then, these instruments of stupid at DOJ dismiss the extensive list that CREW submitted of prior examples where interview reports and related documents have been released by appealing to the "case-specific factors" of this case.

Plaintiff seems to suggest that the existence of this material within the public domain undercuts DOJ's position that the release of the disputed material would deter or diminish future cooperation by senior White House officials such as the President and Vice President. It does not.

It is not DOJ's contention that interview reports of White House officials can never be released without impairing law enforcement interests. Rather, the predictive judgment as to whether release could deter future needed cooperation by senior White House officials **depends on case-specific factors such as how high-ranking the official was, whether he or she or the President he or she served was in office at the time of the interview, and the period of time that has elapsed since the individual has left office.** Cf. Breuer Decl. ¶ 5 (noting the particular deterrent to cooperation that could exist if an official "believe[s] that the information provided could become public while the official is still in office"). The facts in the instant case warrant non-disclosure: the interviewee was the then-sitting Vice President of the United States and disclosure was initially sought while he was in office and is sought now only months after he left office. [my emphasis]

First of all, that reference there, in the

middle of the second paragraph, that promises "case-specific factors"? Here's what it says:

In addition, as a general rule, a prosecutor cannot tell a White House official how long he or she believes an investigation may last, and the official may thus believe that information provided could become public while the official is still in office. Therefore, if law enforcement interviews of the President, Vice President or other senior White House officials become subject to routine public disclosure, even upon the conclusion of an investigation, there is an increased likelihood that such officials could feel reluctant to participate in voluntary interviews or, if they agree to such voluntary interviews, could decline to answer questions on certain topics.

DOJ has not provided case-specific factors. On the contrary, it has presented one big hypothetical with no specific proof in the least, and even the specifics they repeat—sitting Vice President, disclosure only months after leaving office—are met or exceeded by a slew of examples in the CREW list, starting first and foremost with "Bill Clinton, President."

Indeed, DOJ has been presented with a list of prior examples where high level White House officials have been interviewed while in the White House, and the contents of the interview were released **while** the high level officials were still in office. DOJ has been presented with evidence, in fact, that "public disclosure" already is "routine"—precisely the circumstances that, they claim, will inhibit cooperation. And their response to that is, "golly, you've got to look at the specific facts of the case." But the specific facts in **this case**—in which Dick Cheney, knowing that, "law enforcement interviews of the President, Vice President or

other senior White House officials" already were "subject to routine public disclosure, even upon the conclusion of an investigation," cooperated willingly.

Dick Cheney's willing cooperation (but not, perhaps, a "full account of relevant events") **in this precise case** is proof that DOJ's claim is full of shit! Dick Cheney knew that release of interview contents was the norm, and yet he willingly cooperated without even trying to get any kind of waiver. Dick Cheney's cooperation proves that prior release will not dissuade cooperation. (Hell, if Ken Starr's obsession with Bill Clinton's blow job wasn't going to inhibit Dick's cooperation, I don't know what would.)

(To be fair, DOJ does some impressive back flips to explain why these examples aren't like this case, including saying that some of them are so old—dating to prior Administrations or investigations **in which Cheney personally participated**—that the examples are somehow invalid. DOJ would have you believe Cheney slept through Watergate in his office at the White House.)

Jeebus, I hate when people whose salaries my taxes pay produce the stupid at such high volume!!

Hidden under these piles of steaming stupid, however, there is one nugget that explains DOJ's real worry. In response to the long list of things included in Cheney's interview that have already been revealed in the public record, apparently, there are some statements that are unlike what has been released in the public record.

Moreover, as a factual matter, the portions of the FBI 302 protected by the deliberative process privilege are not identical to the public domain information submitted by plaintiff, and in several instances, the FBI 302 contains information that is not at all

similar to any information found in
plaintiff's submission.

Now, as I've explained, there is one claimed item that was never released in the public record (Cheney's conversation with Condi during leak week) and one item that was referenced but not explained in detail (Cheney's discussions with Tenet which may have been where he learned of Valerie's identity). Two items.

So maybe DOJ is trying to protect those two items (I guess I can understand, as the two conversations may reveal that the VP learned of a CIA officer's identity, then told the National Security Advisor they were going to leak that identity—but that's the most extreme case imaginable).

But DOJ is not, just, referring to "information that is not at all similar" to information in the public record. It is also trying to hide information that is "not identical to the public domain information."

In other words, the evidence presented at trial that Dick Cheney learned of Plame's identity, passed it on to Libby in the context of responses to journalists, apparently ordered Libby to leak it to a journalist, but didn't tell anyone else at the White House up to and including George Bush about that order—DOJ is stating that Cheney said some things in his interview that are "not identical" to those things revealed at trial.

And that, my friends, is what this heap of steaming stupid is designed to keep hidden.