

DOJ'S ATTEMPT TO SHIELD OBSTRUCTION OF JUSTICE

I agree with bmaz. This letter from DOJ refusing to turn over the Bush and Cheney interview reports is a load of crap (h/t W0, who's doing all the heavy lifting today). I've gotta go to a meeting, so check back later for (I hope) some real smack-down of DOJ's crap. But here are the key passages.

In seeking to accommodate the Committee's requests, however, we must take into account core Executive Branch confidentiality interests and fundamental separation of powers principles, and we must avoid taking steps that could compromise the effectiveness of future criminal investigations involving White House personnel. Consequently, as we have informed the Committee, we are not prepared to provide or make available any reports of interviews with the President or the Vice President from the leak investigation. To do so would allow Congress to obtain through access to Justice Department investigative files information that it otherwise could not gather through its own inquiry because of separation of powers.

Your various letters on this matter have explained that the Committee's legislative purpose for its inquiry concerns the review of White House procedures for handling classified information. We have attempted to accommodate this interest by permitting the Committee to review the reports of interviews of senior White House staff, which contain some information relevant to this subject. However, these reports also contain considerable information

detailing the internal White House deliberations and communications of senior White House staff concerning how they should respond on behalf of the President to public assertions challenging the accuracy of a statement made in the President's State of the Union Address. The Executive Branch has important institutional interests in the confidentiality of such White House deliberations and communications, and we therefore accommodated the Committee's interests by making interview reports of senior White House staff available for review but not copying, with limited redactions of presidential and vice presidential communications and personal information not germane to the leak investigation.

We are not prepared to make the same accommodation for reports of interviews with the President and Vice President because the confidentiality interests relating to those documents are of a greater constitutional magnitude. The President and the Vice President are the two nationally elected constitutional officers under our Government. The President heads the Executive Branch and, as the Congress has by law recognized, the Vice President often advises and assists the President in the President's performance of his executive duties. It is settled as a matter of constitutional law, reflected in court decisions, and congressional and Executive Branch practice, that the communications of the President and the Vice President with their staffs relating to official Executive Branch activities lie at the absolute core of executive privilege. The interview reports sought by the Committee deal directly with internal White House deliberations and communications relating to foreign policy and national

security decisions faced by the President and his immediate advisers. Congressional access to those reports would intrude into one of the most sensitive and confidential areas of presidential decision-making.

Moreover, from the institutional perspective, the Committee's request for copies of FBI reports of interviews with the President and the Vice President raises a very serious additional separation of powers concern relating to the integrity and effectiveness of future law enforcement investigations by the Department. There is an admirable tradition, extending back through Administrations of both political parties, of full cooperation by the White House with criminal investigations. In keeping with this tradition, the President and the Vice President (as well as the White House staff) cooperated voluntarily with the Special Counsel's leak investigation and agreed to be interviewed informally outside the presence of the grand jury. Were future Presidents and Vice Presidents (or their staffs) to perceive that providing such voluntary interviews would create records that would likely be made available to Congress, there is a clear and unacceptable risk that they might limit the scope of any voluntary interview or insist that they will only testify pursuant to a grand jury subpoena and subject to the protection of the grand jury secrecy provision, Rule 6(e) of the Federal Rules of Criminal Procedure. Thus, if the Department were to make available records of voluntary interviews with the President and the Vice President (or release copies of the interview reports of senior White House staff), this precedent could create an unfortunate disincentive for voluntary cooperation

with future Department criminal investigations involving official White House actions. Such a result would significantly impair the Department's ability to conduct future law enforcement investigations where such investigations would benefit from full White House cooperation.

Just a few quick points. First, DOJ is suggesting that the President and Vice President wouldn't have to comply with a subpoena to testify—they're basically saying that separation of powers puts the President and his Barnacle above the law. That doesn't jive with the reasons why Presidents and Vice Presidents have been given that courtesy in the past and is dangerous on its face.

Second, DOJ is hiding—in the name of national security—damning evidence of presidential abuse of power. It is absolute bullshit on its face—absolute bullshit.

Third, Looseheadprop has made compelling arguments before that, since the SOTU is compelled by the Constitution, lying in it—as opposed to, say, on Meet the Press—is much more serious legally. And that is what's at question. But DOJ wants to shield discussions about how the White House ignored evidence when it put together its SOTU.

Fourth, this basically says any time the President and Vice President want to smear a citizen to hide their own embarrassment, their discussions about that smear are protected from Congress, the body Constitutionally obliged to guard against abuse of power. This argument is basically carte blanche for the President and his Barnacle to ruin the lives of citizens at will—with no possibility for oversight.

This is a dangerous letter—and only goes to show how desperate the Administration is to avoid releasing these reports.