

TURDBLOSSOM'S STILL A LYING SACK; AP JOURNALISTS ARE STILL SUCK-UPS

A number of people have pointed to Ron Fournier's "breezy correspondence" with Karl Rove in 2004.

In a chain under the subject line "H-E-R-O," Rove replied to an e-mail from Fournier by saying, "How does our country continue to produce men and women like this?"

Fournier replied, "The Lord creates men and women like this all over the world. But only the great and free countries allow them to flourish. Keep up the fight."

Fournier, now the AP's acting Washington bureau chief, said Monday: "I was an AP political reporter at the time of the 2004 e-mail exchange, and was interacting with a source, a top aide to the president, in the course of following an important and compelling story. I regret the breezy nature of the correspondence."

But thus far, I haven't seen anyone point out that AP's love affair with Turdblossom is still going strong. In yesterday's case, the AP's Lynn Elber allowed Rove to completely steamroll her (probably all in the name of maintaining AP's "breezy" relationship with him). Elber was reporting on Fox News EVP John Moody's nonchalance about employing a contemptuous character like Karl Rove.

John Moody, Fox News executive vice president, was asked if it undercuts the channel's credibility to have someone

with Rove's "political baggage" in its lineup.

"No," Moody replied, calling the former Bush adviser an authority on politics and adding that the current difference of opinion with Congress is between Rove and lawmakers.

But then Elber portrays Rove's refusal to testify precisely as he'd like her to—as a combination of traditional executive privilege and the much more audacious absolute immunity that Steven Bradbury dreamed up.

But when a reporter tried to press the point with Moody, Rove jumped in to dispute characterization of the dispute as personal.

"It's not between me and Congress. **I've not asserted any personal privilege.** This is between the White House and Congress," Rove said.

The issue centers on "**the ability of the president to receive advice from senior advisers and for those senior advisers not to be at the beck-and-call of Congress for testimony,**" Rove said.

[snip]

Rove has said previously he is bound to follow the White House's guidance, although he has offered to answer questions specifically on the Siegelman case — but only with no transcript taken and not under oath.

[snip]

The **White House has cited executive privilege** as a reason he and others who serve or served in the administration shouldn't testify, **arguing that internal administration communications are confidential** and that Congress cannot

compel officials to testify. [my emphasis]

Apparently Elber reported this entire story without ever actually checking what the White House had cited. Because, as I pointed out here, the White House did not once mention executive privilege in their guidance to Rove not to testify.

Now look at the letter Fred wrote Luskin and the letter Luskin sent to HJC. Go ahead look closely. Do you see the words "executive privilege" anywhere in either of those two letters?

It's not there.

For that matter, check out the memo Steven Bradbury wrote last year rationalizing why Harriet Miers didn't have to show up—which is what Fielding cites to justify Rove's absence today. Look closely. See any mention of executive privilege in that memo? Nuh uh. It's not in there, either.

So Elber's argument is incorrect when it states that the White House claimed that, "internal administration communications are confidential." Mind you, they do claim that, frequently, but they did not do so in **this** case. Rather, they argue:

The President is the head of one of the independent Branches of the federal Government. If a congressional committee could force the President's appearance, fundamental separation of powers principles—including the President's independence and autonomy from Congress—would be threatened.

In other words, the White House did not and is not asserting that this pertains to confidential internal administration communications (and how

could they? Rove has been blathering about this stuff on TV for six months!). Rather, Bush is just asserting that were he—or top aides like Rove—forced to appear before Congress, it would threaten the institution of the Presidency itself.

Now, the significance is important beyond the question of whether or not Rove's "official duties" included the politicization of investigations into Democrats. Once it becomes clear that the White House did not invoke executive privilege (as we typically understand it), then that dramatically undermines Rove's claim that "I have not asserted any personal privilege." In a traditional executive privilege claim, true, the privilege resides with the President; when he invokes it, he's basically forbidding an aide from damaging his prerogatives. The absolute immunity privilege also rests on Presidential prerogative. But as Steven Bradbury describes it, at least (and he seems to be the only one who believes in this nonsense), absolute immunity is not a requirement that Rove not testify, it's a **lack** of requirement that he show up. As Fielding says, in the letter that asserts absolute immunity,

We have been further advised that because Mr. Rove was an immediate presidential adviser and because the Committee seeks to question him regarding matters that arose during his tenure and relate to his official duties in that capacity, **Mr. Rove is not required to appear in response to the Committee's subpoena.** [my emphasis]

The implication, of course, is that Rove **can** appear, he just can't be compelled to do so (mind you, we're still just pretending that Steven Bradbury's little theory is valid, which I don't believe it is). If you need any proof that a presidential adviser can appear, if he chooses to do so, look no further than David Addington, who showed up under subpoena to

testify before the very same Committee that subpoenaed Rove, pathetically waving the magic Bradbury opinion, yet still, ultimately, showing up. According to Bradbury's opinion, Addington didn't have to show up, but he could, and did (for whatever unknown reason). (In fact, according to the Rehnquist opinion on which the magic Bradbury opinion rests, Addington would have absolute immunity but Rove would not, since Rehnquist's argument applied only to current aides, not aides who had been fired a year earlier.)

Mind you, Bush did tell Rove not to show up (and presumably didn't tell Addington not to show up).

Mr. Rove is not required to appear in response to the Committee's subpoena. Accordingly, the President has directed him not to do so.

I'm not really sure how this works—Bradbury's magic opinion does rest the privilege in the President. But the aide, himself, has the privilege. While I'm sure Bush's direction is still significant (again, still pretending that Bradbury's theory isn't bunk), it's nowhere near as strong a claim as it would be if the President claimed he was protecting the advice he was given by Rove, which he hasn't claimed. It's still a matter between the White House and Congress—but nowhere near as clearly so as if Bush really had invoked traditional executive privilege.

So here's where Rove snookers his latest AP interlocutor. He claims this is about "the ability of the president to receive advice from senior advisers and for those senior advisers not to be at the beck-and-call of Congress for testimony" when in this case, it is actually about solely "the ability ... for [the President's] senior advisers not to be at the beck-and-call of Congress for testimony." But Elber, apparently without looking at what the White House said, just repeated Rove's claim

without challenging it. Why should she challenge Rove? Her editor, Ron Fournier, would probably just tell Rove to ignore her challenge and "Keep up the fight!"

Which is how, once again, the AP willingly participated in Karl Rove's successful efforts to spew disinformation.