

WAXMAN'S INVESTIGATION

Unlike HJC, Oversight does not publicly release subpoenas when they serve them. So Mukasey's cowardly letter begging Bush to invoke executive privilege so he doesn't have to go to jail for shielding Dick Cheney's role in outing Valerie Plame is one of the first hints of the scope of what Waxman was after. Here are some details I find particularly interesting.

The subpoenaed documents concern the Department's investigation by Special Counsel Patrick Fitzgerald into the disclosure of Valerie Plame Wilson's identity as an employee of the Central Intelligence Agency. The documents include Federal Bureau of Investigation ("FBI") reports of the Special Counsel's interviews with the Vice President and senior White House staff, as well as handwritten notes taken by FBI agents during some of these interviews. The subpoena also seeks notes taken by the Deputy National Security Advisor during conversations with the Vice President and senior White House officials and other documents provided by the White House to the Special Counsel during the course of the investigation. Many of the subpoenaed materials reflect frank and candid deliberations among senior presidential advisers, including the Vice President, the White House Chief of Staff, the National Security Advisor, and the White House Press Secretary. The deliberations concern a number of sensitive issues, including the preparation of your January 2003 State of the Union Address, possible responses to public assertions challenging the accuracy of a statement in the address, and the decision to send Ms. Plame's husband, Ambassador Joseph Wilson, to

Niger in 2002 to investigate Iraqi efforts to acquire yellowcake uranium. Some of the subpoenaed documents also contain information about communications between you and senior White House officials.

[snip]

Much of the content of the subpoenaed documents falls squarely within the presidential communications and deliberative process components of executive privilege. Several of the subpoenaed interview reports summarize conversations between you and your advisors, which are direct presidential communications. Other portions of the documents fall within the scope of the presidential communications component of the privilege because they summarize deliberations among your most senior advisers in the course of preparing information or advice for presentation to you, including information related to the preparation of your 2003 State of the Union Address and possible responses to public assertions that the address contained an inaccurate statement. In addition, many of the documents summarize deliberations among senior White House officials about how to respond to media inquiries concerning the 2003 State of the Union Address and Ambassador Wilson's trip to Niger.

First, as LS astutely points out, Mukasey mis-characterizes the entire investigation, claiming it was about "the disclosure of Valerie Plame Wilson's identity as an **employee** of the Central Intelligence Agency." No, AG Mukasey, the investigation was into the disclosure of Valerie's identity as a **covert operative**. Your guess why Mukasey does this is as good as mine, but some possibilities thrown out in this thread include:

- Mukasey knows Bush and Cheney insta-declassified her covert status so he wants to carefully maintain that she was not covert
- Mukasey's primary source of news is Bob Novak's column, so he genuinely believes that Novak used the word operative as one big mistake, meaning the key leak was Armitage's
- Mukasey hasn't read all the documents affirming that she was covert
- Mukasey's trying to diminish this whole thing to absolve himself from thinking it's okay that the Vice President outed a CIA operative
- Mukasey disagrees with the Special Counsel interpretation that CIA was taking affirmative actions to keep Valerie's identity secret

From this mis-characterization, Mukasey launches into a list of things covered by the subpoena. I'm not really sure whether Mukasey lists them this way to establish the "claim" for privilege, or whether he's trying to warn Bush what they contain. For example, why does Mukasey mention the "handwritten notes taken by FBI agents during some of these interviews" unless he wanted to warn Bush (and Cheney) that Agent Eckenrode had written, "this confirms that Cheney did order the Plame outing" or "Cheney doesn't admit what Libby admitted—that they had compared stories"?

✘ The request for "notes taken by the Deputy National Security Advisor during conversations with the Vice President and senior White House officials" makes me wonder whether Waxman requested Hadley's side of the conversations he had with Cheney and Libby the week of the leak, particularly the conversation on July 10, in which Hadley passed on the news from Condi that "the President is comfortable," just after Libby's own notes include empty space that he left to record what Hadley said, leaving us wondering what the President is comfortable with. Note, too, that Libby tried to declassify Hadley's notes from this meeting through CIPA, to no avail.

Mukasey mentions "frank and candid deliberations" among senior advisors, listing Cheney, Card, Condi, and Scottie McC. Given the mention of Scottie McC, I'm guessing this reference might be a specific reference to the Libby-exoneration discussions from October 4, 2003. Which raises the question whether Condi was involved in that discussion? (We do know that she and Scottie McC may have discussed saying that Rove didn't leak at all).

The reference to "deliberations concern a number of sensitive issues, including the preparation of your January 2003 State of the Union Address, possible responses to public assertions challenging the accuracy of a statement in the address, and the decision to send Ms. Plame's husband, Ambassador Joseph Wilson, to Niger in 2002 to investigate Iraqi efforts to acquire yellowcake uranium" leads me to believe that—at a minimum—the subpoenaed documents would make it very clear that everyone knew Alan Foley had told the White House not to use the uranium claim in the SOTU—and that they had to check with him before they finalized Tenet's July 11, 2003 statement. The documents also probably include some record of George Tenet making it clear to Condi Rice that NSC, even more than CIA, owned most of the blame for the Niger claim appearing in the SOTU. Also, note the weird

construction from Attorney General Orwell. Do the subpoenaed documents include "deliberations concern[ing] ... the decision to send" Wilson to Niger? Or do they contain "deliberations concern[ing] ... possible responses to ... the decision to send" Wilson to Niger?

Grammatically, it is the former. If so, is Mukasey referring to CIA deliberations? Or was there some White House deliberation about that trip we don't know about?

When Mukasey refers to "information about communications between you and senior White House officials," it sure makes me wonder if this is a reference to communication between Bush and Libby—particularly the communication on June 9, 2003, that effectively sparked OVP to go into hyperdrive collecting oppo research on Joe Wilson?

Mostly, though, Mukasey seems intent on shielding not only Cheney's FBI interview report, which would reveal how he answered when asked, "did you authorize the leak of Valerie Wilson's name?" but also anything pertaining to the discussions between Hadley, Libby, and Cheney, which would not only reveal the lengths to which Cheney went to try to blame all this on CIA, but also might provide more details about "what the President knew and when did he know it?"

One more detail. I'm certain, from these descriptions, that Libby is among the "senior advisors" listed here. But you note that Mukasey never admits he's trying to protect communications between the President and a convicted felon?

Update: As I review this, I realize that the White House Press Secretary named in the letter may actually be Ari Fleischer. According to Scottie McC's book, there was a discussion in the White House—apparently not including Tenet—that led to the July 7 admission that the uranium claim should never have been in the SOTU. That conversation almost certainly included Card, Condi, and Ari; if it also

included Dick, it might explain why he ordered the Code Red with Libby that set off the leak of Plame's identity.