

BREAKING: JUDGE BATES RULES FOR THE HOUSE

Judge Bates just issued his opinion in the Miers and Bolten contempt case—and he ruled in favor of the House. Miers will have to appear and Bolten will have to turn over ~~the documents~~ a description of the documents he is withholding. (I guess all it took was for me to post this post.)

This also means Rove will have to appear, as Bates threw out the notion of "absolute immunity."

I'll have more shortly.

Update: Here's the opinion. (Note, I've fixed my statement above—Bolten has to turn over a description of the documents he is withholding, but not the documents, yet.)

Here's the crux of Bates' logic:

Notwithstanding that the opposing litigants in this case are co-equal branches of the federal government, at bottom this lawsuit involves a basic judicial task – subpoena enforcement – with which federal courts are very familiar.

Update: Here's what Bates thinks of this "absolute immunity" claim:

Indeed, the aspect of this lawsuit that is unprecedented is the notion that Ms. Miers is absolutely immune from compelled congressional process. The Supreme Court has reserved absolute immunity for very narrow circumstances, involving the President's personal exposure to suits for money damages based on his official conduct or concerning matters of national security or foreign affairs. The Executive's current claim of absolute immunity from

compelled congressional process for senior presidential aides is without any support in the case law. The fallacy of that claim was presaged in *United States v. Nixon* itself (*id.* at 706):

neither the doctrine of separation of powers, nor the need for confidentiality of high level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial [or congressional] process under all circumstances.

Also, bonus points to Bates for mentioning Boumediene, which is sure to cause BushCo a whole lot of heartburn.

Update: Here's Conyers on the decision.

Today's landmark ruling is a ringing reaffirmation of the fundamental principle of checks and balances and the basic American idea that no person is above the law. Judge Bates' decision makes clear that the Congress had the right to subpoena Harriet Miers to learn of her role in the US Attorney firings, that her claim to be immune from subpoena was invalid and that the Committee was entitled to challenge that claim in Court. The Judge also ruled that the White House may not claim Executive Privilege over documents without describing them in reasonable detail so that these claims of privilege can be evaluated by Congress. We look forward to the White House complying with this ruling and to scheduling future hearings with Ms. Miers **and other witnesses who have relied on such claims**. We hope that the defendants will accept this decision and expect that we will receive relevant documents and call

Ms. Miers to testify in September. [my emphasis]

Note Conyers' reference to "other witnesses" who relied on the absolute immunity. He's thinking of Rove, I assure you.

Update: Here's Pelosi.

As public officials, we take an oath of office to uphold the Constitution seriously and today's landmark ruling by the U.S. District Court is a great victory for the American people, the rule of law and balance of power. We must restore our nation's fundamental system of checks and balances, and today's ruling begins to restore that balance.

As I told the House of Representatives in February when we passed the resolution authorizing this court case, congressional oversight is an institutional obligation to ensure against abuse of power. And when there are credible allegations that law enforcement has been politicized, the need for congressional oversight is at its greatest.

This decision should send a clear signal to the Bush Administration that it must cooperate fully with Congress and that former Administration officials Harriet Miers and Karl Rove must testify before Congress.

Note that she's nowhere near as coy as Conyers is—this ruling has even greater effect on Rove than it does on Miers.