

SCOTT SHANE'S LOVE AFFAIR FOR DICK CHENEY AND KIT BOND

The NYT's Scott Shane presents what pretends to be a comprehensive review of the options for some kind of investigation into Bush era crimes. He reviews four options—a criminal investigation akin to Lawrence Walsh's Iran-Contra investigation, a congressional investigation akin to the Church Committee, a bipartisan investigation akin to the 9/11 Commission, and nothing aside from currently investigations like the OPR review of Yoo's and Bradbury's advocacy on torture.

But there are two very disturbing aspects to his story.

First, in a review of options for holding what we all know to be Dick Cheney responsible for shredding the Constitution, why would you present such a selective picture of Dick's own history with efforts to hold Presidents responsible for violating the law?

Many Republicans, however, say the lofty appeals to justice and history mask an unseemly and dangerous drive to pillory the Bush administration and hamstring the intelligence agencies.

That was precisely the view of an aide in Gerald Ford's White House named Dick Cheney when a Senate committee led by Frank Church of Idaho looked into intelligence abuses in the mid-1970s. A quarter-century later, as vice president, Mr. Cheney would effectively wreak vengeance on that committee's legacy, encouraging the National Security Agency to bypass the warrant requirement the committee had proposed and unleashing the Central Intelligence Agency he felt the committee had shackled.

[snip]

But some Republicans saw Mr. Church as a showboat and his committee as overreaching. To Mr. Cheney, the Church legacy was a regrettable pruning of the president's powers to protect the country – powers he and Bush administration lawyers reasserted after the Sept. 11, 2001, attacks.

Shane's claims about Cheney's views are odd. He bases his characterization on no quote from Cheney, though many are readily available. And his first description—the claim that Cheney's "precise view" of the Church Committee was that it was really about an "unseemly and dangerous drive to pillory the [Nixon?] administration and hamstringing the intelligence agencies"—seems to contradict his later more accurate claim that Cheney believed the Church committee improperly constrained Presidential powers. Which is it? A personalized attack against one administration and the targeting of intelligence professionals or an attack on Presidential power? Or is Shane suggesting that Cheney's view of any investigation now would be an attempt to pillory the Bush/Cheney Administration, which is a different stance than his prior position regarding investigations of Presidents?

And then, just as oddly, Shane makes absolutely no mention of the role that Dick Cheney played in the Iran-Contra investigation, as the ranking member of the Congressional investigative committee. Cheney was just as central a figure in defending Reagan's (and Poppy's) abuse of power as he was in defending Nixon's.

What makes the weird approach to Cheney all the weirder is Shane's mis-citation of Eric Holder on whether or not the Administration would prosecute those who devised the torture program, which Shane uses to set up some kind of equivalency between Poppy pardoning Cap Weinberger (who, after all, was protecting Poppy himself) with Obama's and Holder's disinterest

in prosecuting those who implemented Cheney's plan for torture.

Attorney General Eric H. Holder Jr. said at his confirmation hearing that he, like Mr. Obama, did not want to "criminalize policy differences" by punishing officials for acts they believed were legal. The same language was used in 1992 by President George H. W. Bush when he pardoned six officials charged in the Iran-contra investigation. Mr. Bush called the charges "a profoundly troubling development in the history of our country: the criminalization of policy differences."

Perhaps I'm being overly sensitive to the word "officials" here—which seems to suggest those in some position of authority. But since we've already seen Kit Bond try to expand the meaning of Holder's reference to "intelligence officers" to include political leaders, it seems some precision is worthwhile. Holder has clearly stated he won't prosecute those who implemented Cheney's torture (and warrantless wiretapping, presumably) policy. He has remained non-committal on whether or not Dick Cheney is above the law.

Now, Shane does address this other scenario—prosecuting those, like Yoo, who justified torture, and those, like Cheney, who pushed for the regime (and note his use of "official" again here). But he pretty dismisses that as too hard (notwithstanding Carl Levin's report which clearly shows the involvement of Rummy in the torture).

But many legal experts believe that the Justice Department would be hard pressed to prosecute as torture methods that the department itself declared in 2002 not to be torture. And if an important goal is to determine who devised the policies, a push to prosecute might only

persuade past officials to lawyer up and clam up.

This whole story, after all, is about holding Dick Cheney and his minions accountable. And while none of the past examples Shane gives address the possibility of holding Cheney accountable (somehow, Shane ignores the Nixon investigation), he just throws a flaccid, "a push to prosecute [Dick Cheney] might only persuade [him] to lawyer up and clam up."

Really? Dick Cheney? And yes—I met Shane while we were both covering the Libby trial.

Admittedly, Shane's weird story will probably not affect whether or not we get some kind of investigation into Cheney going forward (though I'll be curious to see if anyone adopts Shane's transparently bad logic and "analysis"). But I do find it a rather neurotic expression of a certain unwillingness to describe what is really going on here.