CHENEY INTERVIEW: THE NEW JON STEWART-WORTHY EXCUSES

As I mentioned, DOJ did one crappy-ass job of trying to give Emmet Sullivan a better reason they can't turn over Dick Cheney's interview materials than that Jon Stewart would embarrass poor Dick. They trot out the same canard about needing cooperation from high level officials in the future. But there two big problems with their argument.

The Release of a Late-Investigation Interview of the Target of that Investigation Will Hurt Early Investigative Cooperation

First, they're basically forced to argue that they won't be able to get information early in an investigation if VPs and the like worry that their interviews with Special Counsels will eventually be made public.

> For example, obtaining information through interviews early in an investigation "often assists law enforcement agents in obtaining important background information," "help[s] law enforcement investigators determine where to concentrate or focus the investigation," and may "obviate the need to convene a grand jury at all or circumscribe the focus of the grand jury's inquiry." Breuer Decl. ¶ 6. "A law enforcement investigation based upon interviews subject to an expectation of confidentiality also benefits from senior officials more inclined to provide identifiable leads, name percipient witnesses, offer credibility assessments of the accuser or other witnesses, and even articulate inferences, insight or hunches that can be invaluable to a law enforcement investigator."

But of course this interview wasn't about "obtaining important background information" about "where to concentrate or focus the investigation" that might "obviate the need to convene a grand jury." Neither Bush nor Cheney gave an interview at that early stage of the process. Rather, this was an interview conducted while there was an active grand jury, at a time when all major witnesses save journalists had already been interviewed.

This was an interview of the ultimate target of the investigation, not a mere bystander.

Meanwhile, the DOJ wants to pretend that a grand jury investigation of top White House officials might thwart an investigation.

> Additionally, if a senior White House official were to require the investigators to go through the grand jury process, "[s]uch a decision could impose considerable practical difficulties and burdens upon investigators and prosecutors that at best could prolong investigations and at worst thwart investigations."

Tell that to Karl Rove and his five grand jury appearances. Turdblossom couldn't get enough of the grand jury (and he's been before a grand jury since). Which, in turn, makes this claim all the more laughable.

> Mr. Breuer also expresses a concern about politicization of law enforcement investigations: "In addition, forcing White House officials to be brought before grand juries could have the effect of injecting the law enforcement investigation itself into the political process, which could intrude upon government operations at the highest level of government, and which could risk the perception that the investigation itself was political, thus undermining public faith in the

> impartiality of the judicial system. Baseless, partisan allegations that easily could be investigated and dismissed through voluntary interviews now may have to be investigated through the specter of the grand jury process.

Aside from the obvious fact—which played out in this case—that White Houses are going to go to some lengths to avoid an investigation getting to the grand jury stage because it implies a seriousness that an FBI interview does not, again, Cheney's interview happened after everyone had been before the grand jury already. Which makes the argument pretty nonsensical.

Here's Evidence from a Library of Public Reports Proving We Can't Release This Information Publicly

And then there's the other big problem with their investigation. Judge Sullivan asked for a list of the other White House officials who have been interviewed in the past. And to make that list, DOJ referred to a whole slew of public reports basically revealing the contents of the interviews that—DOJ reports—were never released in FBI 302 form. The list of those reports includes:

- Final Report of the Independent Counsel for Iran/Contra Matters
- Final Report of the Independent Counsel In Re: Janet G. Mullins
- Report of the Independent Counsel In Re: Vincent W. Foster, Jr.
- Report of the Independent Counsel In Re: David Watkins
- Final Report of the Independent Counsel In Re:

Madison Guaranty Savings & Loan Ass'n
- Tenth Report by the Committee on Government Reform

DOJ also erroneously claims that Fitzgerald interviewed a slew of people in this investigation (they're mistaking the earlier fall 2003 FBI interviews with Fitzgerald's later interviews before the grand jury) and admits that Reagan's interview transcript from Iran-Contra is public.

In other words, to support their argument that if interviews with top White House officials were to be made public, no one would cooperate, they name a bunch of interviews that—because there was a final public report for the investigation—were made public (though not the 302s)!

Not only that, but they list the five grossly political investigations of Clinton, and claim—with a straight filing-face!—that anything they could do would politicize investigations.

We Can't Reveal Info Publicly That's Already Been Released

And then, finally, there's the fact that DOJ is basically claiming a bunch of things already released in the Libby trial to be exempt from FOIA. For example, here's the list of things that DOJ says is exempt—with either the name, or a document showing very closely related evidence:

- Vice President's discussion of his requests for information from the CIA relating to reported efforts by Iraqi officials to purchase uranium from Niger. *Faxes, memo, and CIA's*

version of VP request all released at trial or subsequent to trial.

- Vice President's description of government deliberations, including discussions between the Vice President and the Deputy National Security Advisor, in preparation of a statement by the Director of CIA regarding the accuracy of a statement in the President's 2003 State of the Union Address. *Libby's notes—with Cheney's statements—introduced at trial.*
- Vice President's recollection of discussions with Lewis Libby, the White House Communications Director, and the White House Chief of Staff regarding the appropriate response to media inquiries about the source of the disclosure of Valerie Plame Wilson's identity as a CIA employee. *Cheney's own note introduced at trial—with additional testimony from David Addington and in Libby's Grand Jury testimony.*
- Vice President's description of government deliberations

involving senior officials regarding whether to declassify portions of the October 2002 National Intelligence Estimate. *Described in Scooter Libby's Grand Jury Testimony.*

- Description of a confidential conversation between the Vice President and the President, and description of an apparent communication between the Vice President and the President. *Described in Scooter Libby's Grand Jury testimony.*
- Names of non-governmental third-parties and details of their extraneous interactions with the Vice President. *Andrea Mitchell, possibly Bob Novak.*
- Name of a CIA briefer. *Probably Craig Schmall.*
- Names of FBI agents. *Jack Eckenrode and Deb Bond.*
- Names of foreign government and liaison services. *Italy, the UK, and Niger.*
- The name of a covert CIA employee. *Valerie Plame Wilson.*
- The methods CIA uses to assess and evaluate intelligence and inform policy makers. *Sending Joe*

Wilson to Niger.

As noted in that post, this information is all that is new:

- Vice President's discussion of the substance of a conversation he had with the Director of the CIA concerning the decision to send Ambassador Wilson on a fact-finding mission to Niger in 2002.
- Vice President's recollection of the substance of his discussions with the National Security Advisor while she was on a trip to Africa.
- Vice President's description of his role in resolving disputes about whether to declassify certain information.

So DOJ is basically saying that a bunch of information released in one of the most publicized trials of the last several years cannot not be re-released because it is tied to the Vice President who was willing to testify at that trial about precisely these things and—partly because he didn't testify, has had a cloud over his head ever since.

And, if I'm right that the covert CIA op that Cheney talked to Tenet about is Plame—as Libby claimed in his Grand Jury appearances—then it means DOJ says it can't reveal Plame's real name even though Cheney was instrumental in revealing Plame's real name. Which is all the more problematic since in Cheney's devious little mind, he was preparing to claim that he had

insta-declassified Plame's ID so Libby could leak it to Judy Miller.

You know? DOJ was making a less ridiculous argument back when they were arguing Cheney's interview materials couldn't be released because Jon Stewart would make fun of him.