Congress of the United States
Washington, DC 20515

June 29, 2007

Fred Fielding, Esq.
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Fielding:

The return date and time for the White House Chief of Staff, Joshua Bolten, to appear before our Committees on behalf of the White House and bring with him the documents compelled by the subpoenas we issued on June 13 was yesterday at 10 a.m. Mr. Bolten did not do so. Instead, you wrote us that, despite conceding that you have responsive documents in your possession, you refuse to produce even a single one based on a blanket executive privilege claim. We had hoped our Committees' subpoenas would be met with compliance and not a Nixonian stonewalling that reveals the White House's disdain for our system of checks and balances.

We urge the President to reconsider this step and withdraw his privilege claim so the American people can learn the truth about these firings. If he is unwilling to withdraw these claims, we call on you to provide more specific information to facilitate ruling on those claims and our consideration of appropriate action to enforce our subpoenas.

On June 13, we issued subpoenas compelling the White House to produce documents related to our Committees' investigations into the mass firings and replacements of U.S. Attorneys and politicization at the Department of Justice. We did so reluctantly after seeking voluntary cooperation from the White House for three months. Even though the evidence gathered by our Committees shows that White House officials were heavily involved in these firings and in the Justice Department's response to congressional inquiries about them, the White House has not produced a single document or allowed even one White House official involved in these matters to be interviewed.

Our Committees rejected your "take it or leave it" offer of off-the-record, backroom interviews and severe limits on the scope of our requests as unacceptable, more than three months ago. Since that time, despite our many attempts to narrow the dispute and begin to obtain the information we need, you have not made any effort to work with us on a voluntary basis. Even now, in response to subpoenas authorized by our Committees, you have again merely restated your initial, unacceptable offer. Your proposal is not commensurate with our exercise of the broad investigatory power of Congress.

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Our power to investigate has been described as essential to the legislative function by the Supreme Court and "as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Eastland v. United States Serviceman's Fund*, 421 U.S. 491, 504, n. 15 (1975). Indeed, the Court has specifically recognized that Congress' "broad" investigatory authority "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes," and includes the power to "inquire into and publicize corruption, maladministration, or inefficiencies" in the Executive Branch. *Watkins v. United States,* 354 U.S. 178, 182, 200 n.33 (1957). Moreover, as we have said many times, your proposal would constrain not only our investigation, but also the ability of the American people to learn the truth about these firings.

In fact, the letter you enclosed from Acting Attorney General Clement makes clear that internal White House documents, which you have refused even to discuss making available, contain information directly responsive to our subpoenas. According to Mr. Clement, those documents specifically discuss "the possible dismissal and replacement of U.S. Attorneys," the "wisdom of such a proposal, specific U.S. Attorneys who could be removed, potential replacement candidates, and possible responses to congressional and media inquiries about the dismissals." The subject matter of these documents heightens our concern about the involvement of White House officials in these firings and in the inaccurate testimony given to our Committees about them, including possible obstruction of justice and other violations of federal law. It is precisely for these reasons that we have sought for many months to obtain information from the White House.

Your action today in stonewalling the Committees' investigations is also inconsistent with the practices of every Administration since World War II in responding to congressional oversight. In that time, presidential advisers have testified before congressional committees 74 times voluntarily or compelled by subpoenas. During the Clinton Administration, White House and Administration advisors were routinely subpoenaed for documents or to appear before Congress. For example, in 1996 alone, the House Government Reform Committee issued at least 27 subpoenas to White House advisors. The veil of secrecy you have attempted to pull over the White House by withholding documents and witnesses is unprecedented and damaging to the tradition of open government by and for the people that has been a hallmark of the Republic.

Moreover, your blanket assertion of executive privilege belies any good faith attempt to determine where privilege truly does and does not apply. A serious assertion of privilege would include an effort to demonstrate to the Committees which documents, and which parts of those documents, are covered by any privilege that may apply.

Indeed, the subpoenas themselves specifically stated that for each document withheld, you should provide a description of the nature, source, subject matter, and date of the document; the name and address of each recipient of an original or copy of the document and the date received; the name and address of each additional person to whom any of the contents of the document were disclosed along with the date and manner of disclosure; and the specific legal basis for the assertion of privilege. Such privilege logs have been provided by the White House in previous Administrations, and this Justice Department has provided similar logs in this very matter, which have been used to help resolve disputes about the production of documents. Yet, you have failed to provide any such information.

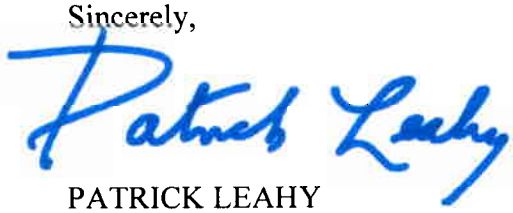
In addition, at least since the Reagan Administration in 1982, there has been a specific determination and signed statement by the President when executive privilege has been asserted. In accord with this procedure, President Bush himself has issued such assertions during his Administration. See, e.g., Memorandum for the Attorney General re Congressional Subpoena for Executive Branch Documents (December 12, 2001). See also "Procedures Governing Responses to Congressional Requests for Information," issued on November 4, 1982, and 6 Op. OLC 31 (1982). Yet you have failed to include any such Presidential assertion or even state whether you have now decided to disregard this established procedure.

Please provide the documents compelled by the subpoenas without further delay. If you continue to decline to do so, you should immediately provide us with the specific factual and legal bases for your claims regarding each document withheld via a privilege log as described above and a copy of any explicit determination by the President with respect to the assertion of privilege. You have until July 9, 2007, at 10 a.m. to bring this and any other information you wish to submit to our attention before we move to proceedings to rule on your claims and consider whether the White House is in contempt of Congress.

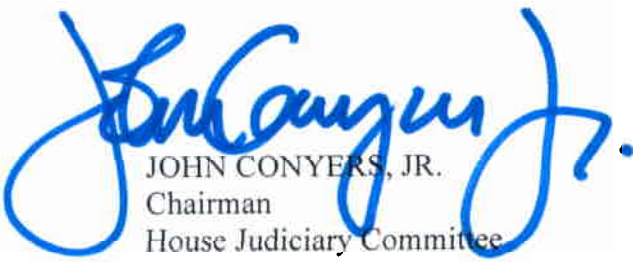
We were disappointed that we had to turn to these subpoenas in order to obtain information needed by the Committees to learn the truth about these firings and the erosion of independence at the Justice Department. We are even more disappointed now with yet further stonewalling.

Whether or not we have the benefit of the information we have directed you to provide by July 9, we will take the necessary steps to rule on your privilege claims and appropriately enforce our subpoenas backed by the full force of law.

Sincerely,



PATRICK LEAHY
Chairman
Senate Judiciary Committee



JOHN CONYERS, JR.
Chairman
House Judiciary Committee

cc: The Honorable Arlen Specter
The Honorable Lamar S. Smith