THE WHITE HOUSE

WASHINGTON

July 9, 2007

Dear Chairman Leahy and Chairman Conyers:

I write in response to your letter of June 29, 2007.

Let me begin by conveying a note of concern over your letter's tone and apparent direction in dealing with a situation of this gravity. We are troubled to read the letter's charge that the President's "assertion of Executive Privilege belies any good faith attempt to determine where privilege truly does and does not apply." Although we each speak on behalf of different branches of government, and perhaps for that reason cannot help having different perspectives on the matter, it is hoped you will agree, upon further reflection, that it is incorrect to say that the President's assertion of Executive Privilege was performed without "good faith."

As the letter from the Acting Attorney General explained in considerable detail, the assertion of Executive Privilege here is intended to protect a fundamental interest of the Presidency: the necessity that a President receive candid advice from his advisors and that those advisors be able to communicate freely and openly with the President, with each other, and with others inside and outside the Executive Branch. In the present setting, where the President's authority to appoint and remove U.S. Attorneys is at stake, the institutional interest of the Executive Branch is very strong. The Acting Attorney General's letter clearly identifies the subject matter of the deliberations and communications at issue and provides an extensive treatment of the issues implicated by the subpoenas and the legal basis for the President's assertion of Executive Privilege.

Your letter does not dispute these principles. It does not take issue with the practical fact that, in order to fulfill his constitutional functions, the President, no less than Members of Congress and federal judges, needs the protection of a principle that shields his close advisors from open-ended inquiry by another branch of government. The letter does not challenge the exclusive character of the President's appointment and removal power, nor does the letter attempt to establish a constitutional basis for the Committees' inquiry into this matter. Although the letter sets forth certain generalizations relating to Congress's investigatory authority, it does not explain how that authority extends to White House communications about the possible dismissal and replacement of U.S. Attorneys. And, even if Congress's authority might be deemed to extend that far, the question remains whether the Committees have demonstrated that the information sought here is demonstrably critical to the responsible fulfillment of the Committees' legislative functions.

In response to your inquiry concerning the mechanics of the President's assertion of the privilege, you may be assured that the President's assertion here comports with prior practices in similar contexts, and that it has been appropriately documented. I do hope that your Committees

will appreciate that I write on behalf of the President and therefore understand that my letter of June 28, 2007 precisely expresses the President's position on this matter.

Your letter also "direct[s]" the President to provide certain additional information to the Committees before 10:00 a.m. on July 9, 2007. The letter goes on to say that a very detailed "privilege log" is necessary "to facilitate ruling on" claims of Executive Privilege and your letter thereafter announces an intention to "take the necessary steps to rule on [the President's executive] privilege claims." We are aware of no authority by which a congressional committee may "direct" the Executive to undertake the task of creating and providing an extensive description of every document covered by an assertion of Executive Privilege. Given the descriptions of the materials in question that have already been provided, this demand is unreasonable because it represents a substantial incursion into Presidential prerogatives and because, in view of the open-ended scope of the Committees' inquiry, it would impose a burden of very significant proportions.

One final observation underscores the preordained futility of any White House compliance with this demand. When your letter states that your Committees "will take the necessary steps to rule on [the President's] privilege claims and appropriately enforce our subpoenas" and that *the Committees will enforce their subpoenas "[w]hether or not [they] have the benefit of the information"* (emphasis added), only one conclusion is evident: the Committees have already prejudged the question, regardless of the production of any privilege log. In such circumstances, we will not be undertaking such a project, even as a further accommodation.

As noted in my previous letter, as we remain at the present impasse, the President feels compelled to assert Executive Privilege with respect to the testimony sought from Sara M. Taylor and Harriet E. Miers covering White House consideration, deliberations or communications, whether internal or external, relating to the possible dismissal or appointment of United States Attorneys, including consideration of possible responses to congressional and media inquiries on the United States Attorneys matter, consistent with the advice provided by the Acting Attorney General. The President has instructed me to notify you and the counsel for Ms. Taylor and Ms. Miers of his decision and to inform counsel of his direction to Ms. Taylor and Ms. Miers not to provide this testimony.

I renew again the President's offer: in the absence of subpoenas he remains willing to provide you with information as previously offered. And I likewise convey the President's request that further interbranch relations in this matter be distinguished by respect for the constitutional principles of both institutions and marked by a presumption of goodwill on all sides.

Respectfully yours,

Fred F. Fielding
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