

THE WHITE HOUSE
WASHINGTON

BY HAND

August 20, 2007

Dear Chairman Leahy:

In our letter of last Tuesday (August 14, 2007), sent in response to yours of August 8 setting a subpoena return date of August 20 for production of materials relating to "the National Security Agency's warrantless electronic surveillance program," we advised that the White House, the National Security Council, and the Department of Justice were unlikely to be in a position to produce any responsive documents by that date. Our reasons, which are set forth in the August 14 letter, remain unchanged, which is to say that a core set of highly sensitive national security and related documents we have so far identified are potentially subject to claims of executive privilege and that a more complete collection and review of all materials responsive to the subpoenas will require additional time.

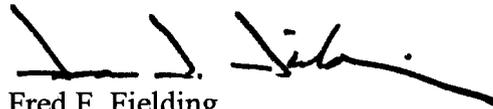
Our August 14 letter also conveyed our hope to avoid conflict between the branches over this, and spoke of the need to discuss a possible accommodation that would do so, thereby finding a way to provide your Committee - and other involved committees of the House and Senate - with information relevant to appropriate inquiries, while furthering our common endeavor and mutual goal of modernizing FISA in an expeditious manner.

To date, we have received no response to our August 14 letter. Moreover, it is our understanding that you have scheduled a hearing on this matter for this afternoon. So, this letter is to reiterate that although no documents will be produced today for the reasons set forth previously and above, we do hope you and your Committee members will consider our request to expeditiously seek a means of accommodation that will negate the need for an assertion of executive privilege.

It remains our goal to avoid a conflict between the branches on this important issue of national security. As noted in our August 14 letter, your agreement to suspend the return date until some time after Labor Day would provide the time needed to negotiate and resolve any issues that might impede our efforts to reach an accommodation.

We do continue to seek your positive response to this request, and to avoid unnecessary conflict.

Respectfully yours,



Fred F. Fielding
Counsel to the President

cc: The Honorable Arlen Specter

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510