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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

October 22, 2007

Mr. Fred Fielding  
Counsel to the President  
Office of the Counsel to the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Fielding:

Since the existence of the President's secret wiretapping program became public in December 2005, the Judiciary Committee has been seeking information on the legal justifications for conducting such surveillance outside the Foreign Intelligence Surveillance Act. We have done so through oral and written requests and by conducting oversight hearings. Former Attorney General Gonzales was asked about these matters. The lack of satisfaction with his responses led to further investigations, including the ongoing probe by the Justice Department's Inspector General. In light of the Administration's failure to respond fully, the Committee was prepared in November 2006 to consider subpoenas to telecommunication companies. Those subpoenas were not issued at that time, however.

After our repeated requests did not yield the information the Committee requested, the Committee proceeded in June to authorize subpoenas for documents related to the legal justification for the Administration's warrantless wiretapping program and to serve those subpoenas upon the Administration.

You have now had more than ample time to collect and process the relevant documents. Responsive information to those subpoenas is long overdue. You have made commitments to provide responsive information over the last several months and even recently, but no such information has yet been provided.

Instead, we read that a White House spokesperson has now conditioned the production of information on prior Senate agreement to provide retroactive immunity from liability for communications carriers. That is unacceptable and would turn the legislative process upside down. If the Administration wants our support for immunity, it should comply with the subpoenas, provide the information, and justify its request. As we have both said, it is wrongheaded to ask Senators to consider immunity without their being informed about the legal justifications purportedly excusing the conduct being immunized. Although the two of us have been briefed on certain aspects of the President's program, this cannot substitute for access to the documents and legal analysis needed to inform the legislative decisions of the Committee as a whole.

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By letter dated October 5, 2007, your office committed to assembling the documents responsive to our subpoenas by today's date. We expect the commitments of your office to take priority over any White House comments to the media. Accordingly, we urge your compliance with the Committee subpoenas and other information requests without further delay. We can discuss precise arrangements for the production of and access to the documents, but they should be provided in a manner that permits them to be reviewed and considered by all Members of the Committee and appropriate Committee staff.

Sincerely,

Handwritten signature of Patrick Leahy in cursive script.

PATRICK LEAHY  
Chairman

Handwritten signature of Arlen Specter in cursive script.

ARLEN SPECTER  
Ranking Member