

THE WHITE HOUSE

WASHINGTON

June 28, 2007

Dear Chairman Leahy and Chairman Conyers:

On June 13, 2007, the White House received two subpoenas from your Committees requesting documents relating to the replacement of United States Attorneys, calling for the documents to be produced by June 28, 2007. I write at the direction of the President to advise and inform you that the President has decided to assert Executive Privilege and therefore the White House will not be making any production in response to these subpoenas for documents. In addition, Chairman Leahy subpoenaed documents from former Deputy Assistant to the President and Director of Political Affairs Sara M. Taylor, with the same return date of June 28, 2007. Chairman Conyers has subpoenaed documents from former Counsel to the President Harriet E. Miers, with a return date of July 12, 2007. Counsel for Ms. Taylor and Ms. Miers have been informed of the President's decision to assert Executive Privilege and have been asked to relay to Ms. Taylor and Ms. Miers a direction from the President not to produce any documents.

With respect, it is with much regret that we are forced down this unfortunate path which we sought to avoid by finding grounds for mutual accommodation. We had hoped this matter could conclude with your Committees receiving information in lieu of having to invoke Executive Privilege. Instead, we are at this conclusion.

At the outset of this controversy, the President attempted to chart a course of cooperation. It was his intent that Congress receives information in a manner that accommodated Presidential prerogatives. The Department of Justice, for its part, has produced or made available for review more than 8,500 pages of documents, including scores of documents containing communications with White House personnel. In addition, the Attorney General, Deputy Attorney General, Principal Associate Deputy Attorney General, Attorney General's former Chief of Staff, former White House Liaison, and other senior Department officials have testified in public hearings and, in some instances, submitted to interviews with Committee staff. As a result, your Committees have received an extraordinary amount of information regarding the U.S. Attorney replacement issue by way of accommodation.

In keeping with the established tradition of Congress and the Executive Branch working together to accommodate each others' interests, the President was willing to go even further in response to your inquiries. At his direction, we proposed and offered to provide you with documents containing communications between the White House and Department of Justice regarding the request for the resignation of the U.S. Attorneys in question, as well as documents containing communications on the same subject between the White House staff and third parties, including Congress. We also offered to make available for interviews the President's former Counsel; current Deputy Chief of Staff

and Senior Advisor; Deputy Counsel; former Director of Political Affairs; and a Special Assistant to the President in the Office of Political Affairs.

The President's offer reflected his desire to cooperate and accommodate. It was designed to provide your Committees with additional documents, and the rare opportunity to participate in interviews and question close advisors to the President about the matters under inquiry. With the benefit not only of the enormous amount of information you received from the Department of Justice, but also additional White House documents, you would have been able to further inquire about these matters.

To be sure, the President's offer also took care to protect fundamental interests of the Presidency and the constitutional principle of separation of powers. Specifically, the President was not willing to provide your Committees with documents revealing internal White House communications or to accede to your desire for senior advisors to testify at public hearings. The reason for these distinctions rests upon a bedrock Presidential prerogative: for the President to perform his constitutional duties, it is imperative that he receive candid and unfettered advice and that free and open discussions and deliberations occur among his advisors and between those advisors and others within and outside the Executive Branch. Presidents would not be able to fulfill their responsibilities if their advisors—on fear of being commanded to Capitol Hill to testify or having their documents produced to Congress—were reluctant to communicate openly and honestly in the course of rendering advice and reaching decisions. These confidentiality interests are especially strong in situations like the present controversy, where the inquiry seeks information relating to the President's powers to appoint and remove U.S. Attorneys – authority granted exclusively to the President by the Constitution.

The principles at stake here are of the utmost importance and find meaningful parallels in any number of other settings. For example, Messrs. Chairmen, I am sure you would wish to protect the confidentiality of deliberations between Members of Congress and their staff. So, too, do I believe that most judges would be quick to stress the importance to their decision-making processes of maintaining the confidentiality of their deliberations with their colleagues and law clerks. So, too, here: for the Presidency to operate consistent with the Constitution's design, Presidents must be able to depend upon their advisors and other Executive Branch officials speaking candidly and without inhibition while deliberating and working to advise the President. The doctrine of Executive Privilege exists, at least in part, to protect such communications from compelled disclosure to Congress, especially where, as here, the President's interests in maintaining confidentiality far outweigh Congress's interests in obtaining deliberative White House communications. I refer you to the attached opinion from the Acting Attorney General to the President, discussing this in further detail as well as informing him as to the appropriateness of an assertion of Executive Privilege in these circumstances.

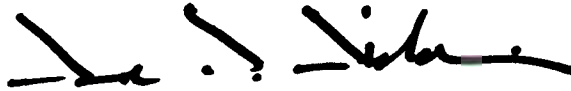
Further, it remains unclear precisely how and why your Committees are unable to fulfill your legislative and oversight interests without the unfettered requests you have made in your subpoenas. Put differently, there is no demonstration that the documents and

information you seek by subpoena are critically important to any legislative initiatives that you may be pursuing or intending to pursue.

By contrast, the President has frequently, plainly, and completely explained that his position, and now his decision, is rooted in a need to protect the institution of the Presidency. The President's assertion of Executive Privilege is not designed to shield information in a particular situation, but to help protect the ability of Presidents to ensure that decisions reflect and benefit from the exchange of informed and diverse viewpoints and open and frank deliberations. Issuing subpoenas and seeking to compel the disclosure of information in lieu of accepting the President's reasonable offer of accommodation has led to confrontation.

Consistent with the analysis of the Acting Attorney General, the President is satisfied that the testimony sought from Sara Taylor and Harriet Miers is subject to a valid claim of Executive Privilege and is prepared to assert the Privilege with respect to that testimony if the matter cannot be resolved. However, the President has further instructed me to confirm that while unwilling to submit to subpoenas compelling the production of documents and testimony, in the absence of any subpoenas he continues to be willing to provide you with information as previously offered. In short, the President requests that your inquiry proceed in a balanced manner, respectful of important constitutional principles of both institutions, rather than through confrontation. It is hoped you will reconsider your present position, accept the President's offer, and bring closure to this controversy so we may all return to more productive activity on behalf of the Nation.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Fred F. Fielding', with a stylized flourish at the end.

Fred F. Fielding
Counsel to the President

Attachment

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

The Honorable John Conyers
United States House of Representatives
Washington, D.C. 20515