

## AMENDMENT TO THE REPORT OFFERED BY MR. GOWDY

**Page 4, strike the last sentence of the seventh paragraph and replace with the following:**

“The Department has not provided a privilege log delineating with particularity why certain documents are being withheld.”

**Page 44, strike the last sentence of the first paragraph under the subheading “Document Productions.”**

**Page 42, insert after the last paragraph under heading “Additional Accommodations by the Committee,” the following:**

On June 20, 2012, minutes before the start of the Committee’s meeting to consider a resolution holding the Attorney General in contempt, the Committee received a letter from Deputy Attorney General James Cole claiming that the President asserted executive privilege over certain documents covered by the subpoena. The Committee has a number of concerns about the validity of this assertion:

1. The assertion was transparently not a valid claim of privilege given its last minute nature;
2. The assertion was obstructive given that it could have and should have been asserted months ago, but was not until literally the day of the contempt mark-up;
3. The assertion is eight months late. It should have been made by October 25, 2011, the subpoena return date;
4. To this moment, the President himself has not indicated that he is asserting executive privilege;
5. The assertion is transparently invalid in that it is not credible that every document withheld involves a "communication[] authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate,"<sup>1</sup>;
6. The assertion is transparently invalid where the Justice Department has provided no details by which the Committee might evaluate the applicability of the privilege, such as the senders and recipients of the documents;
7. Even if the privilege were valid as an initial matter, which it is not, it certainly has been overcome here, as: (i) the committee has demonstrated a sufficient need for the documents as they are likely to contain evidence important to the Committee's inquiry and (ii) the documents sought cannot be obtained any other way. The Committee has spent 16 months investigating, talking to dozens of individuals, and collecting documents from many sources. The remaining documents are ones uniquely in the possession of the Justice Department; and,

---

<sup>1</sup> In re Sealed Case, 121 F.3d 729, 752 (D.C. Cir 1999).

8. Without these documents, the Committee's important legislative work will continue to be stymied. The documents are necessary to evaluate what government reform is necessary within the Justice Department to avoid the problems uncovered by the investigation in the future.

The President has now asserted executive privilege. This assertion, however, does not change the fact that Attorney General Eric Holder Jr. is in contempt of Congress today for failing to turn over lawfully subpoenaed documents explaining the Department's role in withdrawing the false letter it sent to Congress.

Page 44 of 44

...

...

...

...

...

...

...

...