

THE WHITE HOUSE

WASHINGTON

August 1, 2007

Dear Chairman Leahy and Senator Specter:

As you are aware, Chairman Leahy on July 26, 2007 caused to be served two subpoenas on the White House: one for Karl Rove, Assistant to the President, Deputy Chief of Staff and Senior Advisor, and one for J. Scott Jennings, Special Assistant to the President and Deputy Director of Political Affairs. Like the previous June 13 subpoena to former White House Political Director Sara Taylor, these subpoenas seek to compel on August 2, 2007 (1) the production of certain documents in the possession of Mr. Rove and Mr. Jennings related to the replacement of certain United States Attorneys and (2) the appearance for testimony by both Mr. Rove and Mr. Jennings. I write at the direction of the President to advise and inform you that the President has decided to assert executive privilege as to both the requested documents and testimony. Mr. Rove and Mr. Jennings have been informed of the President's decision to assert executive privilege and have been directed not to produce any documents or to provide any testimony covered by the assertion.

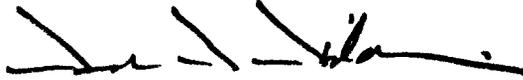
The President's actions today are consistent with his previous assertion of executive privilege over similar subpoenas for documents and testimony in this matter, for the reasons set forth in detail in my letters of June 28, 2007 and July 9, 2007 to Chairman Leahy and Congressman Conyers.

I attach for your reference a letter from the Acting Attorney General to the President, which informs him that "[f]or the reasons set forth in my June 27th letter, it is my legal judgment that executive privilege may properly be asserted with respect to documents and testimony subpoenaed from Mr. Rove and Mr. Jennings that concern the same categories of information described in that letter." Based upon the reasons set out in the Acting Attorney General's June 27, 2007 letter, the President remains committed to protecting the ability of future Presidents to ensure that the Executive's decisions reflect and benefit from the candid exchange of informed and diverse viewpoints and open and frank deliberations that such a privilege provides.

Based upon the advice of the Department of Justice, the President also has requested that I advise and inform you that Mr. Rove, as an immediate presidential advisor, is immune from compelled congressional testimony about matters that arose during his tenure and that relate to his official duties in that capacity. Accordingly, Mr. Rove is not required to appear in response to the Judiciary Committee subpoena to testify about such matters, and he has been directed not to appear. Copies of the supporting documents from the Department of Justice are attached.

It is regretted that the Committee has forced this action, as the President's offer of accommodation to you and to the House Judiciary Committee could have provided information being sought in a manner respectful of Presidential prerogatives and consistent with a spirit of comity. It is the President's continuing hope that the actions taken by the House Judiciary Committee and your Committee might be reconsidered and withdrawn, so that this constitutional impasse may be obviated.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Fred F. Fielding', written over a horizontal line.

Fred F. Fielding
Counsel to the President

Attachments

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

The Honorable Arlen Specter
United States Senate
Washington, D.C. 20510



U. S. Department of Justice

Office of the Solicitor General

Solicitor General

Washington, D.C. 20530

August 1, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

This letter supplements my letter to you dated June 27, 2007, which set forth my legal judgment that executive privilege may properly be asserted with respect to certain documents and testimony concerning the resignation of several United States Attorneys in 2006.

I understand that the Senate Committee on the Judiciary recently issued two additional subpoenas in this matter seeking similar testimony and documents from two additional individuals. Specifically, the Committee has subpoenaed documents and testimony related to the U.S. Attorney resignations from Karl Rove and J. Scott Jennings. Mr. Rove serves as an Assistant to the President, Deputy White House Chief of Staff, and Senior Advisor to the President, and Mr. Jennings serves as a Special Assistant to the President and Deputy White House Director of Political Affairs. For the reasons set forth in my June 27th letter, it is my legal judgment that executive privilege may properly be asserted with respect to documents and testimony subpoenaed from Mr. Rove and Mr. Jennings that concern the same categories of information described in that letter.

Sincerely,

A handwritten signature in black ink, appearing to read "P. D. Clement".

Paul D. Clement
Solicitor General and Acting Attorney General



U.S. Department of Justice

Office of Legal Counsel

Office of the Principal Deputy Assistant Attorney General

Washington, D.C. 20530

August 1, 2007

Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Fielding:

You have asked whether Karl Rove is legally required to appear and provide testimony in response to a subpoena issued by the Committee on the Judiciary of the United States Senate. For the reasons discussed below, we believe he is not.

Mr. Rove serves as an Assistant to the President, Deputy White House Chief of Staff, and Senior Advisor to the President. The Committee, we understand, seeks testimony and documents from Mr. Rove about matters arising during his tenure in these positions and relating to his official duties. Specifically, the Committee wishes to ask Mr. Rove about the removal and replacement of several United States Attorneys in 2006. See Letter for Karl Rove, Deputy Chief of Staff, from the Hon. Patrick Leahy, Chairman, Senate Committee on the Judiciary (July 26, 2007).

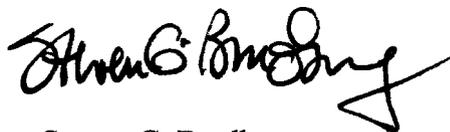
As we explained in our opinion to you dated July 10, 2007, regarding a subpoena to former Counsel to the President Harriet Miers, immediate presidential advisers are constitutionally immune from compelled congressional testimony about matters that arise during their tenure as presidential aides and relate to their official duties. See Memorandum for the Counsel to the President from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Immunity of Former Counsel to the President from Compelled Congressional Testimony* at 2 (July 10, 2007). In our July 10 opinion, we noted that Assistant Attorney General William Rehnquist defined immediate presidential advisers as “those who customarily meet with the President on a regular or frequent basis.” *Id.* at 1 (quoting Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of “White House Staff”* at 7 (Feb. 5, 1971) (“*Rehnquist Memo*”).

Based on the information provided to us, Mr. Rove satisfies the Rehnquist definition of immediate presidential adviser. We understand that Mr. Rove is one of the President’s closest advisers. He meets with the President quite frequently and advises him on a wide range of policy issues. Mr. Rove’s responsibilities and interactions make him a presidential adviser “who customarily meet[s] with the President on a regular or frequent basis.” *Rehnquist Memo* at 7. Accordingly, we conclude that Mr. Rove is immune from compelled congressional testimony

about matters (such as the U.S. Attorney resignations) that arose during his tenure as an immediate presidential adviser and that relate to his official duties in that capacity. Therefore, he is not required to appear in response to the Judiciary Committee subpoena to testify about such matters.

Please let me know if we may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven G. Bradbury". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Steven G. Bradbury
Principal Deputy Assistant Attorney General



U.S. Department of Justice

Office of Legal Counsel

Office of the Principal Deputy Assistant Attorney General

Washington, D.C. 20530

July 10, 2007

MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

Re: Immunity of Former Counsel to the President from Compelled Congressional Testimony

You have asked whether Harriet Miers, the former Counsel to the President, is legally required to appear and provide testimony in response to a subpoena issued by the Committee on the Judiciary of the House of Representatives. The Committee, we understand, seeks testimony from Ms. Miers about matters arising during her tenure as Counsel to the President and relating to her official duties in that capacity. Specifically, the Committee wishes to ask Ms. Miers about the decision of the Justice Department to request the resignations of several United States Attorneys in 2006. See Letter for Harriet E. Miers from the Hon. John Conyers, Jr., Chairman, House Committee on the Judiciary (June 13, 2007). For the reasons discussed below, we believe that Ms. Miers is immune from compulsion to testify before the Committee on this matter and, therefore, is not required to appear to testify about this subject.

Since at least the 1940s, Administrations of both political parties have taken the position that “the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee.” *Assertion of Executive Privilege With Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno) (quoting Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, *Re: Executive Privilege* at 5 (May 23, 1977)). This immunity “is absolute and may not be overborne by competing congressional interests.” *Id.*

Assistant Attorney General William Rehnquist succinctly explained this position in a 1971 memorandum:

The President and his immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis—should be deemed absolutely immune from testimonial compulsion by a congressional committee. They not only may not be examined with respect to their official duties, but they may not even be compelled to appear before a congressional committee.

Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of “White House Staff”* at 7 (Feb. 5, 1971) (“*Rehnquist Memo*”). In a 1999 opinion for President Clinton, Attorney General Reno concluded that the Counsel to the President “serves as an immediate adviser to the President and is therefore immune from compelled congressional testimony.” *Assertion of Executive Privilege*, 23, Op. O.L.C. at 4.

The rationale for the immunity is plain. The President is the head of one of the independent Branches of the federal Government. If a congressional committee could force the President's appearance, fundamental separation of powers principles—including the President's independence and autonomy from Congress—would be threatened. As the Office of Legal Counsel has explained, "The President is a separate branch of government. He may not compel congressmen to appear before him. As a matter of separation of powers, Congress may not compel him to appear before it." Memorandum for Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, at 2 (July 29, 1982) ("*Olson Memorandum*").

The same separation of powers principles that protect a President from compelled congressional testimony also apply to senior presidential advisers. Given the numerous demands of his office, the President must rely upon senior advisers. As Attorney General Reno explained, "in many respects, a senior advisor to the President functions as the President's alter ego, assisting him on a daily basis in the formulation of executive policy and resolution of matters affecting the military, foreign affairs, and national security and other aspects of his discharge of his constitutional responsibilities." *Assertion of Executive Privilege*, 23 Op. O.L.C. at 5.¹ Thus, "[s]ubjecting a senior presidential advisor to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters relating to the performance of his constitutionally assigned functions." *Id.*; see also *Olson Memorandum* at 2 ("The President's close advisors are an extension of the President.")²

The fact that Ms. Miers is a former Counsel to the President does not alter the analysis. Separation of powers principles dictate that former Presidents and former senior presidential advisers remain immune from compelled congressional testimony about official matters that occurred during their time as President or senior presidential advisers. Former President Truman explained the need for continuing immunity in November 1953, when he refused to comply with a subpoena directing him to appear before the House Committee on Un-American Activities. In a letter to that committee, he warned that "if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President." *Texts of Truman Letter and Velde Reply*, N.Y. Times, Nov. 13, 1953, at 14 (reprinting November 12, 1953 letter by President Truman). "The doctrine

¹ In an analogous context, the Supreme Court held that the immunity provided by the Speech or Debate Clause of the Constitution to Members of Congress also applies to congressional aides, even though the Clause refers only to "Senators and Representatives." U.S. Const. art I, § 6, cl. 1. In justifying expanding the immunity, the Supreme Court reasoned that "the day to day work of such aides is so critical to the Members' performance that they must be treated as the latter's alter egos." *Gravel v. United States*, 408 U.S. 606, 616-17 (1972). Any other approach, the Court warned, would cause the constitutional immunity to be "inevitably . . . diminished and frustrated." *Id.* at 617.

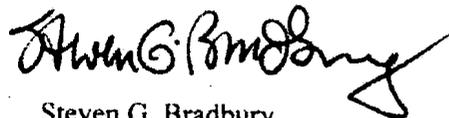
² See also *History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress*, 6 Op. O.L.C. 751, 771-72 (1982) (documenting how President Truman directed Assistant to the President John Steelman not to respond to a congressional subpoena seeking information about confidential communications between the President and one of his "principal aides").

would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the Legislative Branch of the Government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes." *Id.* In a radio speech to the Nation, former President Truman further stressed that it "is just as important to the independence of the Executive that the actions of the President should not be subjected to the questioning by the Congress after he has completed his term of office as that his actions should not be questioned while he is serving as President." *Text of Address by Truman Explaining to Nation His Actions in the White Case*, N.Y. Times, Nov. 17, 1953, at 26.

Because a presidential adviser's immunity is derivative of the President's, former President Truman's rationale directly applies to former presidential advisers. We have previously opined that because an "immediate assistant to the President may be said to serve as his alter ego . . . the same considerations that were persuasive to former President Truman would apply to justify a refusal to appear [before a congressional committee] by . . . a former [senior presidential adviser], if the scope of his testimony is to be limited to his activities while serving in that capacity." Memorandum for the Counsel to the President from Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, *Re: Availability of Executive Privilege Where Congressional Committee Seeks Testimony of Former White House Official on Advice Given President on Official Matters* at 6 (Dec. 21, 1972).

Accordingly, we conclude that Ms. Miers is immune from compelled congressional testimony about matters, such as the U.S. Attorney resignations, that arose during her tenure as Counsel to the President and that relate to her official duties in that capacity, and therefore she is not required to appear in response to a subpoena to testify about such matters.

Please let me know if we may be of further assistance.



Steven G. Bradbury
Principal Deputy Assistant Attorney General