

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
v. HARRIET MIERS, *et al.*, Case No. 1:08-cv-00409 (JDB)

EXHIBIT 5

Congress of the United States
Washington, DC 20510

March 28, 2007

Fred Fielding, Esq.
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Fielding:

When we met recently, each of us agreed to continue to talk and keep the lines of communication open. Nevertheless, we have not heard from you. It is now more than a week since the last set of meetings and almost a week since you received March 23rd letters from each of us inviting the White House to agree to provide the investigating committees of the Congress, both House and Senate, with access to witnesses, information and relevant documents.

As we have previously noted, political influence in federal law enforcement is a serious matter. We need to get to the bottom of what happened, why, how and who was involved in the mass firings of United States attorneys; the criteria used to retain U.S. Attorneys; and possible misstatements to Congress. The fact that recent disclosures have called into question previous statements made by the Attorney General and a high ranking Department of Justice official asserted her fifth amendment rights magnifies the need for a prompt, thorough, and fair investigation.

Allow us to share another step you might consider. At the most recent Senate Judiciary Committee business meeting, Senators from both sides of the aisle made a number of statements seeking White House cooperation. Senator Specter, the Committee's Ranking Republican, said that despite what you, the President and the President's spokesman have been saying, the President was, in fact, willing to negotiate. Senators Hatch and Sessions suggested that the Committee proceed with preliminary interviews of the White House senior staff and then consider whether to authorize subpoenas and compel testimony. Given the terms included in your March 20 letter, that seemed to us disingenuous, to appear to accept your limited proposal and then ultimately to ignore the limitation that there be no follow up testimony to the off-the-record interview you demanded.

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We do believe your willingness to provide documents is worth pursuing. We hope that you will reconsider your "all or nothing" approach with respect to documents you identified that you would be willing to provide. We urge you to provide all relevant documents without delay. The White House documents to and from the Department of Justice and with third parties, such as Republican state party officials, should be provided without delay. You have acknowledged your willingness to provide those to us previously.

That would narrow the dispute over White House documents to those you refer to as "internal". We believe that these are important to our investigation, as well. For example, if there is a memorandum or an e-mail from Karl Rove to Harriet Miers initiating consideration of firing some United States attorneys in order to impede an investigation, that would be very important for the Committees to know. Thus, while we do not agree with you that what you describe as "internal" White House documents should be off limits, we recognize that you view them as a separate category and you disagree whether those should be shared with the Committees. Recognizing we have a dispute over those documents should not delay the Committees receiving the other documents that you indicate you are willing to provide.

If we can narrow our dispute, we may then be able to work through it by agreeing, for example, that we initially designate as "Committee Confidential" what you refer to as "internal" White House documents. We could then consider a process by which we would consult with you prior to making them public.

In addition, we have become increasingly sensitized over the last several days to the White House staff wearing several "hats" and using Republican National Committee and campaign e-mail addresses. In fact, as Chairman Waxman has recently pointed out, congressional investigations, including this one, "have uncovered evidence that White House staff have used nongovernmental e-mail accounts to conduct official government business."

As Chairman Waxman has also pointed out, many exchanges between Jack Abramoff and White House officials were conducted via non-government e-mail accounts. Indeed, he quotes exchanges that suggest that Mr. Abramoff and White House officials were using the nongovernmental accounts specifically to avoid creating a White House "record" of the communications.

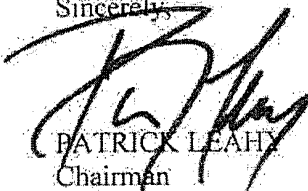
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We hope you agree that such sleight of hand should not be used to circumvent and compromise the comprehensiveness of our investigation. In this matter we have already received a document showing communications between D. Kyle Sampson, the Attorney General's former chief of staff, and J. Scott Jennings, the Special Assistant to the President and Deputy Director of Political Affairs at the White House (who you offered for an off-the-record interview), in which Mr. Jennings does not use his White House e-mail account but an e-mail account at the Republican National Committee designated "gwb43.com." There is another, similar use of a nongovernmental e-mail account in an exchange including Mr. Jennings and Monica Goodling, the Justice Department official who was the White House liaison and who recently invoked her privilege against self incrimination.


Accordingly, we trust that you will be collecting and producing e-mails and documents from all e-mail accounts, addresses and domains and that you are not artificially limiting your production to the official White House e-mail and document retention system.

Again, we urge you to continue to work with us so that we can achieve our mutual goal of getting to the truth in this matter

Sincerely,



PATRICK LEAHY
Chairman
Senate Judiciary Committee



JOHN CONYERS, JR.
Chairman
House Judiciary Committee

cc: The Hon. Arlen Specter
The Hon. Lamar Smith