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July 11, 2007

BY FAX AND U.S. MAIL

Mr. George Manning
Jones Day
1420 Peachtree St., NE, Suite 800
Atlanta, GA 30309-3053

Dear Mr. Manning:

We write in response to your letter dated July 10, which was not faxed to us until 7:15 pm last night. We are disappointed and very concerned by your statement that, based upon a July 10 letter to you from White House Counsel Fred Fielding, your client Harriet Miers intends to disregard the subpoena that was duly issued to her by the Committee on the Judiciary, and refuse even to appear at tomorrow's hearing of the Subcommittee on Commercial and Administrative Law. A congressional subpoena, such as the one issued to Ms. Miers, carries with it two obligations: the obligation to appear, and the obligation to testify and/or produce documents. Even if a witness intends to assert privilege in response to a subpoena, that intention to assert privilege does not obviate the obligation to appear.

We are aware of absolutely no court decision that supports the notion that a former White House official has the option of refusing to even appear in response to a Congressional subpoena. To the contrary, the courts have made clear that no present or former government official – even the President – is above the law and may completely disregard a legal directive such as the Committee's subpoena. In fact, both present and former White House officials have testified before Congress numerous times, including both then-serving and former White House counsel. For example, former White House Counsel Beth Nolan explained to our Subcommittee that she testified before Congressional committees four times, three times while serving as White House counsel and once as former White House counsel. A Congressional Research Service study documents some 74 instances where serving White House advisers have testified before

Congress since World War II.[1] Moreover, even the 1999 OLC opinion referred to in Mr. Fielding's July 10 letter refers only to current White House advisers and not to former advisers and acknowledges that the courts might not agree with its conclusion. Such Justice Department opinions are not law, state only the Executive Branch's view of the law, and have no legal force whatsoever. We note finally that another former White House adviser subpoenaed by the Senate Judiciary Committee in the U.S. Attorney matter, Sara Taylor, appeared today pursuant to Congressional subpoena and testified about many of the relevant facts while also declining to testify about other relevant facts based on the assertion of executive privilege.

A refusal to appear before the Subcommittee tomorrow could subject Ms. Miers to contempt proceedings, including but not limited to proceedings under 2 U.S.C. § 194 and under the inherent contempt authority of the House of Representatives.

We are prepared at the hearing tomorrow to consider and rule on any specific assertions of privilege in response to specific questions. We strongly urge you to reconsider, and to advise your client to appear before the Subcommittee tomorrow pursuant to her legal obligations. The Subcommittee will convene as scheduled and expects Ms. Miers to appear as required by her subpoena.

Sincerely,

John Conyers, Jr.
Chairman

Linda T. Sánchez
Chairwoman, Subcommittee on Commercial and Administrative Law

cc: The Honorable Lamar S. Smith
The Honorable Chris Cannon

[1] Harold C. Relyea & Todd B. Tatelman, Presidential Advisers' Testimony Before Congressional Committees: An Overview, CRS Report for Congress, RL 31351 (April 10, 2007)