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

EXHIBIT 17

THE WHITE HOUSE

WASHINGTON

November 9, 2007

Dear Chairman Conyers:

This is to acknowledge receipt and thank you for your letter of November 5, 2007 ("Letter"), advising that the Committee on the Judiciary of the House of Representatives ("the Committee") has submitted to the full House its report in support of a resolution to cite the President's Chief of Staff and former Counsel with contempt of Congress. Your letter further sets forth terms by which you suggest that the issues surrounding this resolution may be resolved without further confrontation. We completely agree with that goal and have sought to achieve it for over six months.

At the outset it should be noted and as the record makes clear, Mr. Bolten, as a custodian of records, and Ms. Miers, as a witness, have each acted at the President's direction, following his assertion of Executive Privilege, not to provide documents or testimony to the Committee concerning the replacement of certain United States Attorneys in 2006. Thus, taking an action to describe their actions as being contemptuous of the House of Representatives does not seem a just characterization.

From the very beginning of our many discussions and letters, the President attempted to chart a course of accommodation that would provide Congress with information it sought while protecting the Executive Branch's constitutional prerogatives. That is why on March 20, I wrote to you conveying the President's offer to provide the Committee with documents reflecting written communications related to this matter between White House personnel and persons external to the White House, including the Department of Justice, and to make available for interviews several high-ranking White House officials, including Ms. Miers and Karl Rove, the then-Deputy Chief of Staff and Senior Adviser to the President. In five subsequent letters we have reiterated this offer of information, and urged its acceptance.

Since March 20, the Committee has received an extraordinary amount of information from the Department of Justice relating to the dismissals of the United States Attorneys. DOJ has produced or made available for review more than 10,000 pages of documents, many of which reflect communications with the White House. Moreover, more than twenty present or former high-ranking DOJ officials, including the then-Attorney General, then-Deputy Attorney General, and former Chief of Staff to the Attorney General have testified publicly, submitted to committee staff interviews, or both. Not only has this process provided the Committee with abundant opportunities to obtain facts relating to the White House's U.S. Attorney-related communications with the Department of Justice, but also it has made clear there is no need for additional information that would be "demonstrably critical to the responsible fulfillment of the Committee's functions." *See* June 27, 2007 Letter from Solicitor General and Acting Attorney

General to the President, at 2 (quoting *Senate Select Comm. On Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc)).[1]

Your letter correctly confirms that you have written "on eight previous occasions," three of which letters contain or incorporate specific proposals involving terms for a possible agreement. Your March 22, 2007 letter rejects outright the President's March 20, 2007 proposal of accommodation without offering any proposal in response, and with all due respect, the remaining letters contain no suggestion of accommodation but instead make an unqualified request for *all documents* sought by the Committee.

However, more importantly, in those three letters which suggest avenues for further consideration, the proposals have been substantially the same and one-sided: they propose accommodations on the part of the White House without signaling any willingness on the part of the Committee to accommodate itself to the Presidential interests at stake here by, for example, agreeing to limit the scope of the Committee's demands or by forswearing an intention to insist on something less than total acquiescence with the Committee's original demands.

Your current Letter essentially repeats elements of these earlier proposals. And like the earlier proposals, the Letter proposes no ultimate limitation upon the Committee's demands, or an end to the requests.

Thus, the present state of the discussions appears to be this: the President's proposal – to provide the Committee with (i) a very substantial body of requested information through interviews of White House personnel and (ii) responsive, non-internal, White House email communications – is again answered with a proposal that the White House unilaterally commence an open-ended process of providing the information sought by the Committee, without limitation, and without any recognition or regard to the legitimate Executive Branch interests at stake in the controversy; namely, (1) the President's need for counsel from advisors who will speak candidly and openly with him, among themselves and others, and (2) the particular need for such advice where his constitutionally exclusive power to nominate and remove U.S. Attorneys is at issue.

We are therefore at a most regrettable impasse – one that each party to such a dispute is required by tradition and comity to strive to avoid. But to do so requires finding a path that accommodates and blends the needs of each into a solution that also respects and preserves the prerogatives of both. It is this very reason that led the President to seek the compromise that he has proposed. And in asserting Executive Privilege in this matter, the President has done so to defend institutional prerogatives transcending the momentary interests of this or any future Administration.

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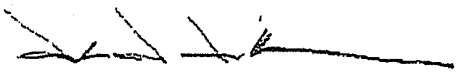
[1] The Acting Attorney General's opinion states further that in order to override a privilege claim, "the Committees must 'point[] to . . . specific legislative decisions that cannot responsibly be made without access to [the privileged] materials.'" Id. at 3 (quoting Senate Select Comm., 498 F.2d at 733). As we have previously noted in correspondence with you, it remains unclear just how and why the Committee is unable to fulfill its legislative and oversight interests without the materials it continues to demand.

The President offered a very substantial accommodation to the Committee, for the purpose of avoiding an institutional confrontation between the Executive and Legislative branches. The Committee has neither accepted the President's proposed accommodation, nor proposed any course other than incremental Executive Branch abandonment of his constitutional obligations.

We respectfully urge the Committee, and the full House, to reconsider its proposed actions; we earnestly request that the path of confrontation be avoided even at this late hour, and exchanged for the proposed solution to provide information. Such would serve the short-term needs as perceived by the Committee, and the long-term interests of both Branches in their dealings with one another, thus better serving the public than any confrontation.

Respectfully yours,



Fred F. Fielding
Counsel to the President

The Honorable John Conyers
United States House of Representatives
Washington, DC 20515

cc: The Honorable Lamar Smith