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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 14, 2008

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

Dear Mr. Fielding:

Despite the July 31 decision and order from the U.S. District Court for the District of Columbia by which Judge Bates rejected the administration's unprecedented claim of "absolute immunity" from congressional subpoenas, by your letter dated August 7, 2008, the administration, again, refused to comply with the Senate Judiciary Committee's validly issued subpoenas for the attendance of Karl Rove and Joshua Bolten.

Last November, I ruled that the White House's executive privilege and immunity claims were not legally valid to excuse Mr. Rove and Mr. Bolten from testifying and producing documents in compliance with the Committee's subpoenas. After their continued non-compliance, the Committee by a bipartisan vote found Mr. Rove and Mr. Bolten in contempt of Congress.

I had noted that the administration's "immunity" claims flew in the face of legal and historical precedence and noted that the administration did not and cannot cite a single court decision in support of its contention. Judge Bates agreed, stating in his July 31 decision that the "Executive's current claim of absolute immunity from compelled congressional process for senior presidential aides is without any support in the case law." I had tried in my July 31 letters to schedule the long overdue appearances by Mr. Rove and Mr. Bolten. Instead, your continued reliance on unprecedented "immunity" claims places the administration starkly at odds with Congress, the federal court, and the rule of law.

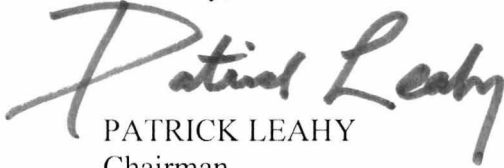
Further, as Judge Bates recounted in his decision, House Judiciary Committee Chairman Conyers and I have expended extensive effort over more than a year trying to reach an accommodation with this administration. You rejected our efforts and insisted on your initial take-it-or-leave-it proposal for off-the-record, backroom interviews with no transcript, no oath, and no ability to follow up, which would have denied Congress the ability to fulfill its legislative and oversight responsibilities.

Mr. Fred Fielding, Esq.
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I reluctantly moved to issue subpoenas only after having exhausted every avenue, sending nearly a dozen letters seeking voluntary cooperation with the Committee's investigation to the White House and its current and former employees. Having obstructed our proceedings for more than a year, and having unsuccessfully resisted the House's action in court, it certainly seems that your intention is simply to run out the clock. It is clear to me that this administration has no interest in complying with its lawful duty or showing respect to the rulings of Congress or the courts.

Despite mounting evidence of significant involvement by White House officials, the White House has still not produced a single document, a list of the materials withheld or the factual basis for any specific claim of executive privilege. When I wrote to the President a year ago following the suggestion of Senator Specter to ask the President to sit down with us and work out an accommodation, my offer was flatly rejected. Despite the conclusion of your August 7 letter, which stated that you "remain available" to explore "ways to reach an accommodation," you have made no proposals and taken no steps toward compliance with the Senate Judiciary Committee's subpoenas or with the court's order. Such hollow words are no substitute for action, especially given this administration's unwillingness to engage in good faith accommodations in the past, the interposed months of delay, and your legal position having been repudiated by the court.

Sincerely,

A handwritten signature in cursive script that reads "Patrick Leahy". The signature is written in dark ink and is positioned above the printed name and title.

PATRICK LEAHY
Chairman

cc: The Honorable Arlen Specter