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GEORGE T. MANNING
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January 15, 2009

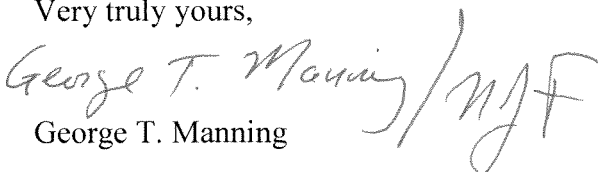
VIA E-MAIL

Elliot M. Mincberg
Chief Counsel, Oversight and Investigations
House Judiciary Committee
Room 2138, Rayburn House Office Building
Washington, D.C.

Dear Mr. Mincberg :

I am in receipt of the subpoena to Ms. Miers dated January 9, 2009. Please find attached a letter from the Counsel to the President of the United States informing Ms. Miers that, in view of the Executive Branch's assertions of executive privileges and immunities in this matter, she continues to be directed (1) not to provide information (including documents or testimony) to the Congress in this matter; and (2) not to appear before the Congress in this matter, including the deposition scheduled for January 16, 2009. In view these directives, Ms. Miers will be unable to attend the deposition scheduled for January 16, 2009, or to produce the information referenced in the January 9, 2009 subpoena.

Very truly yours,


George T. Manning

cc: Hariet Miers, Esq.
Fred F. Fielding, Esq.

WAI-2907477v1

THE WHITE HOUSE

WASHINGTON

January 15, 2009

Dear Mr. Manning:

On behalf of your client, former Counsel to the President Harriet E. Miers, you have asked us whether, in view of the President's assertion of Executive Privilege over Ms. Miers' testimony relating to the U.S. Attorneys matter, she must appear, give testimony, and produce documents at the House Judiciary Committee deposition noticed for Friday, January 16, 2009 pursuant to the subpoena issued by the House Committee on the Judiciary, dated January 9, 2009.

We have previously been advised by the Department of Justice that Ms. Miers has absolute immunity from compelled Congressional testimony as to matters occurring while she was a senior advisor to the President. See Letter from Fred F. Fielding to George T. Manning dated July 10, 2007 (with attachments). As set forth in my earlier letter, the Department of Justice has opined that "[t]he President and his immediate advisors are absolutely immune from testimonial compulsion by a Congressional committee." See *Memorandum for the Counsel to the President re: Immunity of Former Counsel to the President from Compelled Congressional Testimony*, dated July 10, 2007 (quoting *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno)). That immunity arises from the President's position as head of the Executive Branch and from Ms. Miers' former position as a senior advisor to the President.

As you are aware, the question of immunity for senior Presidential advisors is among the issues presently the subject of litigation in the United States Court of Appeals for the District of Columbia. In that litigation, the Department continues to adhere to its longstanding view that a person in Ms. Miers' position cannot be compelled to appear before Congress because "[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 his constitutionally assigned functions." 23 Op. O.L.C. at 5.

The subpoena also seeks testimony and documents from Ms. Miers. In letters dated June 28, 2007 and July 9, 2007, I notified you of the President's direction that Ms. Miers was not to provide documents in this matter and not to provide testimony to the Committee.

Please advise Ms. Miers (i) that the President continues to direct her not to provide information (whether in the form of testimony or documents) to the Congress in this matter and (ii) that, consistent with the President's exercise of Executive Privilege relating to her testimony and documents, and in view of the Department's longstanding position on the immunity question, the President directs her, in the exercise of this constitutional immunity, not to appear before Congress in this matter, including at the House Judiciary Committee deposition on January 16, 2009.

Please contact me if you have any questions or would like to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred F. Fielding". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fred F. Fielding
Counsel to the President

George T. Manning, Esq.
Noel J. Francisco, Esq.
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