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RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Eleventh Congress

February 13, 2009

Mr. Robert D. Luskin
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037-1350

Dear Mr. Luskin:

Pursuant to my letter to you of January 29, 2009, and your agreement to accept service on behalf of Karl Rove, I am enclosing a subpoena for Mr. Rove to appear and provide testimony by deposition on February 23, 2009, at 10:00 a.m. in room 2138 of the Rayburn House Office Building.

Like every citizen subject to compulsory process, I believe it is Mr. Rove's obligation to appear in response to subpoena and answer the questions he is asked or assert a valid legal privilege in response to individual questions. As you know, the House Judiciary Committee has been seeking to obtain Mr. Rove's testimony since March, 2007. In the intervening months, a federal court has rejected the justification put forth by the Bush Administration and relied upon by your client and others for failing to meet his obligations under the law as having "no judicial support whatsoever."[1] The notion that – unlike any other citizen and unlike the President himself – Presidential advisers are totally immune from subpoena, according to the Court, "rests upon a discredited notion of executive power and privilege." I believe that continued defiance of the subpoena is even less tenable in light of the fact that Mr. Rove is now the former Adviser to a former President and President Obama has previously called this position of absolute immunity "completely misguided."[2]

Through staff, I understand that you have offered to have your client testify voluntarily, but only on the Siegelman matter, and that in any event you have requested a further delay in the deposition. I cannot agree to either of these requests for a number of reasons.

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[1]Memorandum Opinion, Committee on the Judiciary v. Miers, Civil Action No. 08-0409 (JDB) at 83 (July 31, 2008).

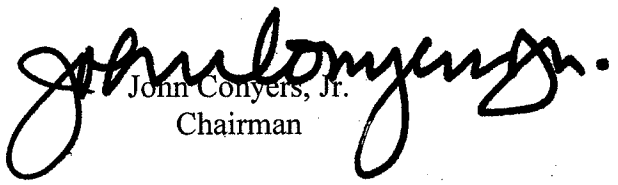
[2]Appuzzo, *Congress Contempt; Lawsuit could be power shake-up for Obama, McCain*, Associated Press, June 24, 2008.

With regard to the request to unilaterally limit Mr. Rove's testimony to the Siegelman matter, as we have previously discussed,[3] I do not believe it is acceptable for the Committee to allow witnesses to unilaterally determine what they can and cannot testify concerning, again absent assertion of a valid privilege. Moreover, the proposed distinction between the Siegelman matter and the U.S. Attorneys investigation generally does not appear to be a tenable or viable distinction. They are part and parcel of the same serious concerns about politicization of the U.S. Attorney corps and the Justice Department under the Bush Administration. Indeed, your own April 29, 2008, letter appears to recognize that the Siegelman matter and the U.S. Attorney firings are related as part of the concerns regarding such politicization. In that letter, you stated that the alleged "politicization of the Department of Justice" during the Bush Administration "includes matters, such as the firing of U.S. Attorneys," as well as "the more narrow issue concerning Governor Siegelman."[4] Finally, conducting a voluntary deposition under these circumstances could simply serve to further delay matters beyond the nearly two years I have been waiting, since the Committee could not then be in a position to utilize contempt or other enforcement mechanisms in response to any improper refusal to answer questions.

I also cannot agree to your request for a delay to accommodate Mr. Rove's schedule. As you know, the deposition was originally scheduled for February 2. On January 29 I in good faith acceded to your request for a delay since you were scheduled to be out of town at the time and requested more time to prepare. I also notified your office of the new February 23 date at that time. Thus, absent an actual commitment by Mr. Rove to comply with the subpoena, I am not in a position to agree to yet a further delay. In essence, given Mr. Rove's public statements that he does not intend to comply with the subpoena, I am puzzled as to why Mr. Rove needs a mutually convenient date to fail to appear.

I hope that you will reconsider your position and that you and your client will appear for the rescheduled deposition on February 23. Please direct any questions or communications to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

Sincerely,



John Conyers, Jr.
Chairman

cc: Honorable Lamar S. Smith

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[3]See April 29, 2008, Letter from Robert D. Luskin, Esq. to Hon. John Conyers, Jr; May 1, 2008, Letter from Hon. John Conyers, Jr. To Robert D. Luskin.

[4]April 29, 2008, Letter from Robert D. Luskin, Esq. to Hon. John Conyers, Jr.