

THE WHITE HOUSE

WASHINGTON

July 11, 2007

Dear Chairman Conyers:

This responds to your letters dated July 6, 2007 and July 10, 2007 requesting that President Bush provide documents and permit the testimony of aides concerning the President's decision to commute Mr. Libby's sentence.

As you have stated in the past, correctly we believe, "if any matter is abundantly clear by our Constitution, it is that the President has the sole and unitary power to grant clemency," and "the reason that he has the power to grant clemency is that the President is uniquely positioned to consider the law and the facts that apply" in each circumstance. 145 Cong. Rec. H8013 (daily ed. Sept. 9, 1999) (statement of Rep. Conyers).

Former Attorney General Janet Reno expressed that same view in advising President Clinton on the legal basis of his decision to assert executive privilege with respect to internal communications and documents related to his exercise of the President's constitutionally enumerated power to pardon. As Attorney General Reno explained, "Congress' oversight authority does not extend to the process employed in connection with a particular clemency decision, to the materials generated or the discussions that took place as part of that process, or to the advice or views the President received in connection with a clemency decision." And further, "even if the Committee [did have] some oversight role," it is outweighed by the "President's interest in the confidentiality of the deliberations relating to his exercise of this presidential prerogative." Memorandum from Janet Reno, Attorney General, Re: Assertion of Executive Privilege With Respect To Clemency Decision," at 3 (Sept. 16, 1999). Representative Waxman likewise agreed. See also "Third Report by the Committee on Government Reform," H.R. Rep. No. 106-488, at 531 (1999) ("The documents being sought by the Committee contained advice and recommendations presented to the President and his advisors. . . . [a]s stated by the Washington Post, 'if executive privilege does not cover the Puerto Rico flap, it does not meaningfully exist.'") (Statement of Rep. Waxman, et al.).

In the context of the Libby clemency, President Bush provided a full explanation of the basis for his commutation decision in the course of issuing that decision last week. There is simply no cause here for permitting a congressional inquiry into the advice and deliberations of presidential staff. As Attorney General Reno advised, Congress lacks oversight authority to review the decisionmaking leading up to a presidential clemency decision. And to allow such an inquiry would chill the complete and candid advice that President Bush, and future Presidents, must be able to rely upon in the course of discharging their constitutional responsibilities. See, e.g., *In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) ("A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.").

Accordingly, we respectfully must decline your request that the President provide documents and testimony relating to the commutation decision, and trust that the Committee appreciates the basis for this decision.

Sincerely, yours,

A handwritten signature in blue ink, appearing to read "Fred F. Fielding".

Fred F. Fielding
Counsel to the President

The Honorable John Conyers, Jr.
United States House of Representatives
Washington, D.C. 20515

cc: The Honorable Lamar S. Smith