

February 13, 2009

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VIA FACSIMILE

The Honorable John Conyers, Jr.
Chairman, Committee on the Judiciary
House of Representatives
Congress of the United States
2138 Rayburn House Office Building
Washington, DC 20515

Re: Karl C. Rove

Dear Chairman Conyers:

I am writing in response to your letter of February 13, 2009, concerning my client Karl C. Rove, and enclosing a subpoena for his appearance at a deposition on February 23, 2009.

As you know, Mr. Rove has consistently assured you that he has not and does not intend to assert any personal privileges to decline to appear or to answer your questions. However, he has been directed by former President Bush, most recently by letter of January 16, 2009 (which we have shared with Committee staff) not to appear or answer questions concerning the firing of U.S. Attorneys. We know that you disagree with that position and that the Judiciary Committee is a party to litigation pending in the United States Court of Appeals for the D.C. Circuit that is likely to resolve that dispute. Mr. Rove does not have a personal position on these legal issues, which concern the authority of the President, and, unlike the Committee, he is not a party to that litigation.

We also recognize, as you note in your letter, that President Obama might take a different position than the one asserted by former President Bush. To that end, as soon as we received your earlier subpoena, on January 27, 2009, we sought the advice of Gregory B. Craig, Counsel to the President. We have not yet received any response. At this point, therefore, Mr. Rove is not free to appear or to testify concerning the U.S. Attorney firings.

Precisely because we understood that the Committee is also interested in Mr. Rove's testimony about the prosecution of Governor Siegelman – as you put it, they both concern the alleged “politicization” of the Department of Justice – we also immediately called the Committee's

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attention to the fact that Mr. Fielding's letter of January 16, 2009, did not place any limits on Mr. Rove's testimony about the Siegelman matter. We proposed, accordingly, that Mr. Rove appear voluntarily at a deposition, transcribed and taken under oath in accordance with the Committee's practices, limited to the Siegelman matter, which is entirely, factually distinct from the U.S. attorneys firings, even if they may be related conceptually. Although neither Mr. Rove nor I was available on February 23, we proposed that the deposition be scheduled later that same week, for February 26 or 27. We had hoped through that offer to sidestep the legal disputes to which Mr. Rove is not a party and cannot resolve, while at the same time furnishing the Committee with his testimony about a matter that is important to it.

I regret that you have declined that offer, which seemed to us an immediate and constructive step that could be taken while the issues related to former President Bush's direction to Mr. Rove are addressed by others. While you object to "further delay," we had proposed moving the deposition by only three days, which is hardly a material difference. Nor did we ask the Committee to concede any of the legal positions you outline in your letter, merely that their resolution would be left to you and others who have a direct stake in them.

As a consequence, unless the matters involving Mr. Rove's proposed appearance are resolved before February 23 or an accommodation is reached among the Committee, the White House, and former President Bush that permits Mr. Rove's testimony, he respectfully will decline to appear. However, we will continue to discuss these matters with your staff, in the hope that there will soon be a constructive resolution.

Yours sincerely,



Robert D. Luskin

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BCC: Elliot M. Mincberg