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COMMITTEE ON THE JUDICIARY

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April 28, 2008

By Email and U.S. Mail

Mr. Charles J. Cooper
Cooper & Kirk LLC
1523 New Hampshire Avenue, NW
Washington, DC 20036

Dear Mr. Cooper:

I was disappointed to receive your April 25 letter on behalf of former Attorney General Ashcroft, which declined my invitation for his voluntarily appearance before the Committee on May 6. I do appreciate that Mr. Ashcroft has recently testified voluntarily before the Committee and I certainly remain willing to work with you to schedule a convenient time for his further appearance to minimize any burden of this testimony. But the matters at hand are of paramount importance, and I must state once again my firm hope that we can work out an accommodation without need for consideration of compulsory process, as we were able to do regarding his recent appearance, which was limited to the subject of deferred prosecution agreements. I thus hope that you and the former Attorney General will give further consideration to my invitation, including my response below to the concerns raised in your recent letter. If we are not able to reach a mutually agreeable accommodation sometime this week, however, I will have no choice but to consider the use of compulsory process.

Your April 25, 2008, letter fails to provide any proper basis for Mr. Ashcroft to decline to appear before the Committee. As my April 11 letter made clear, we are interested in hearing from Mr. Ashcroft about his personal knowledge of key historical facts, including memoranda that were issued by the Department of Justice under his command, and his participation in meetings at which those opinions appear to have been put to use. These are issues of great interest to the Committee and to the nation.

With respect to your concerns about possible executive or other privilege, such issues are properly addressed on a question-by-question basis, as current DOJ officials have done, not by a blanket refusal to testify. Although the Committee is not bound by DOJ's views on what subjects are appropriate for a former official's testimony, even your letter does not suggest that

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DOJ has categorically objected to Mr. Ashcroft's appearance before the Committee, and the proposed limitations that you describe would still allow Mr. Ashcroft to answer questions regarding the several public Department of Justice legal opinions issued during his tenure on this subject, and the process by which these were developed and the manner in which they were used.

Your letter also refers to currently pending civil litigation against Mr. Ashcroft concerning actions taken during his work at DOJ. Yet numerous witnesses have testified before the Committee and other Congressional committees about subjects pending in litigation. I am aware of no basis for the remarkable claim that pending civil litigation somehow makes it inappropriate for an individual to testify before Congress. If particular questions were to create unique litigation jeopardy for Mr. Ashcroft, we would be happy to address those concerns at the hearing.

Finally, I appreciate that testifying before Congress can be burdensome and respect your statement that Mr. Ashcroft would not be able to appear again on May 6. I am happy, as I stated above, to arrange for a more convenient time.

Once again, I hope that you and your client will reconsider his refusal to testify in order to avoid the need for compulsory process. Please address any communications to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

Sincerely,

A handwritten signature in black ink that reads "John Conyers, Jr." in a cursive, flowing style.

John Conyers, Jr.
Chairman

cc: Hon, Lamar S. Smith
Hon. Jerrold Nadler
Hon. Trent Franks
Hon. Brian A. Benczkowski