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May 22, 2008

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

Dear Mr. Luskin:

We were disappointed to receive your May 21 letter, which fails to explain why Mr. Rove is willing to answer questions in writing for the House Judiciary Committee, and has spoken on the record to the media, but continues to refuse to testify voluntarily before the Committee on the politicization of the Department of Justice, including allegations regarding the prosecution of former Governor Don Siegelman. Because of that continuing refusal, we enclose with this letter a subpoena for Mr. Rove's appearance before the Committee's Commercial and Administrative Law Subcommittee at 10:00 a.m. on July 10, 2008.

In light of specific statements in your letter, we want to clarify several points. Your letter is incorrect in suggesting that the enclosed subpoena will raise the same issues as the Senate Judiciary Committee's subpoena to Mr. Rove and the pending lawsuit concerning our Committee's subpoena to Harriet Miers. Both these matters focus on the firing of U.S. Attorneys in 2006 and efforts to mislead Congress and the public on that subject. Here, as we have made clear from the outset, the Siegelman case is a principal focus of our request for Mr. Rove to testify. In addition, unlike Harriet Miers, Mr. Rove has made a number of on-the-record comments to the media about the Siegelman case and the U.S. Attorney firings, extending far beyond "general denials of wrongdoing." There is no question that both the prior subpoenas to Mr. Rove and Ms. Miers should have been complied with. But it is even more clear that Mr. Rove should testify as we have now directed.

We would also dispute your contention that we are "provoking a gratuitous confrontation while the issues raised by the Committee's request are being litigated in U.S. District Court or why the Committee refuses to consider a reasonable accommodation." There are a variety of mechanisms for resolution of any dispute between us, and we need not wait for resolution of separate and ongoing litigation to attempt to employ or consider those other mechanisms. We have also previously noted that we do not believe your proposal to respond in writing to written questions is reasonable or consistent with the precedents of this Committee.

Your letter also suggests that Mr. Rove is not a "free agent" and would follow the requests of the White House with respect to his testimony. Particularly in light of the factors discussed above, we hope that the White House will not take the position that Mr. Rove should not testify. Other former White House officials, including Sara Taylor and Scott Jennings who worked with Mr. Rove in the White House's political office, have in fact testified in response to congressional subpoenas, and dealt with questions of privilege on a question-by-question basis. Mr. Rove should follow the same course.

We should make clear, however, that Mr. Rove, as a private party not employed by the government, is himself responsible for the decision on how to respond to the enclosed subpoena, which is a legally binding directive that he appear before the Committee on July 10. In an analogous situation in the 1970s, when the White House attempted to instruct a private party, AT&T, not to comply with a House Subcommittee subpoena, AT&T "felt obligated to disregard those instructions and to comply with the subpoena," resulting in a lawsuit by the Administration seeking to enjoin such compliance.[1] We very much hope that will not be necessary in this case, but we also hope that you will understand that Mr. Rove's obligation, as a private party, is to seek to comply with the enclosed subpoena. Indeed, you appeared to recognize this yourself when you responded to an earlier media inquiry as to whether Mr. Rove would comply with such a subpoena by e-mailing "sure."

Finally, we want to make clear that we are very willing to meet with you and your client to discuss this matter. 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

Linda T. Sánchez
Chair, Subcommittee on Commercial and Administrative Law

cc: Hon. Lamar S. Smith
Hon. Chris Cannon

[1] U.S. v. AT&T, 551 F.2d 384, 387 (D.C. Cir. 1976)