

FOIA Marker

This is not a textual record. This FOIA Marker indicates that material has been removed during FOIA processing by George W. Bush Presidential Library staff.

Counsel's Office, White House

Kavanaugh, Brett - Subject Files

Stack:	Row:	Sect.:	Shelf:	Pos.:	FRC ID:	Location or Hollinger ID:	NARA Number:	OA Number:
W	20	12	1	2	9696	22559	2077	2166

Folder Title:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;
002	Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;
003	Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;
004	Fax Cover Sheet	Office of Homeland Security - To: Brett Kavanaugh - From: Edward McNally	1	04/11/2002	P5;
005	Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

FRC ID:

9696

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

CARL LEVIN, MICHIGAN
 DANIEL K. AKAKA, HAWAII
 RICHARD J. DURBIN, ILLINOIS
 ROBERT G. TORRICELLI, NEW JERSEY
 MAX CLELAND, GEORGIA
 THOMAS R. CARPER, DELAWARE
 JEAN CARMANAN, MISSOURI
 MARK DAYTON, MINNESOTA

FRED THOMPSON, TENNESSEE
 TED STEVENS, ALASKA
 SUSAN M. COLLINS, MAINE
 GEORGE V. VOINOVICH, OHIO
 PETE V. DOMENICI, NEW MEXICO
 THAD COCHRAN, MISSISSIPPI
 ROBERT F. BENNETT, UTAH
 JIM BUNNING, KENTUCKY

JOYCE A. RECHTSCHAFFEN, STAFF DIRECTOR AND COUNSEL
 HANNAH S. SISTARE, MINORITY STAFF DIRECTOR AND COUNSEL

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

April 2, 2002

The Honorable Tom Ridge
 Assistant to the President for Homeland Security
 The White House
 1600 Pennsylvania Ave, N.W.
 Washington, D.C. 20500

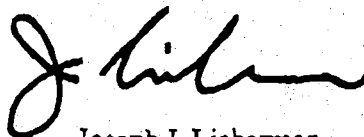
Dear Governor Ridge:

The Senate Committee on Governmental Affairs will hold a hearing to discuss legislation to establish a Department of National Homeland Security on April 11 at 9:30 a.m. in room 342 Dirksen. The Committee requests that you testify on this critical issue of how to organize the federal government to promote homeland security. As Director of the Office of Homeland Security, you have a unique vantage point on the weaknesses in the current federal efforts and the need for change. The Committee seeks your views on the proposed legislation as well as on your own proposals to reorganize to meet threats to this country on our own soil.

The proposed legislation would create a Department of National Homeland Security, to be led by a cabinet Secretary who will be appointed by the President and confirmed by the Senate. Under the original bill (S. 1534), the Department would include the U.S. Customs Service, the U.S. Coast Guard, the Border Patrol of the Immigration and Naturalization Service, the Federal Emergency Management Agency, and several other programs addressing critical infrastructure protection and domestic preparedness. The Secretary would be a member of the National Security Council, and have direct control over those agencies which are central to our capacity to protect our borders and critical infrastructure, while preparing for, and if necessary responding to, another terrorist attack. A new draft of the bill also incorporates several key concepts from Senator Graham's proposed legislation, S. 1449. Specifically, the new draft would create a statutory office in the White House to focus on terrorism, run by a Senate confirmed-director. A copy of this revised draft will be available for your consideration next week.

Given your role in homeland security, especially the knowledge and experience you have gained since the President appointed you on October 8, 2001, it is critical for the Committee to hear your perspectives as we consider legislation designed to vastly improve our government's ability to protect our homeland. I look forward to hearing from you as soon as possible, and to working with you on this vitally important matter.

Sincerely,



Joseph I. Lieberman
 Chairman

JIL:ma

cc: Brett
 USb

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

FRC ID:

9696

FOIA IDs and Segments:

2014-0216-F 1

OA Num.:

2166

NARA Num.:

2077

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of information Act.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

FRC ID:

9696

FOIA IDs and Segments:

2014-0216-F 1

OA Num.:

2166

NARA Num.:

2077

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

THE WHITE HOUSE

WASHINGTON

March 13, 2002

Dear Senator Stevens:

First, I apologize for the tardiness of this reply. Next, I want to thank you for your letter to Assistant to the President for Homeland Security Tom Ridge. The President and the Administration greatly appreciate the continued interest and involvement of you, the Committee on Appropriations, and the entire Congress in the critical homeland security issues facing the Nation. We share your view that it is essential for Federal, state, and local governments to work together closely as part of the significant and sustained national effort to defend the United States and the American people.

The Administration is committed to ensuring that you and the Congress receive the appropriate information you need with respect to the Administration's homeland security policies and practices. As you know, the various Executive Branch departments and agencies with responsibility for homeland security continue to provide substantial amounts of information to Congress. Executive Branch officials such as Attorney General John Ashcroft, Director Robert Mueller of the Federal Bureau of Investigation, and Director Joseph Allbaugh of the Federal Emergency Management Agency have regularly testified before Congress about homeland security and other issues. Director Mitch Daniels of the Office of Management and Budget has regularly testified and provided information on issues related to the budget. In addition, Governor Ridge and other Presidential advisors have met with and provided briefings on homeland security and budgetary issues to many Members of Congress and their staffs on numerous occasions over the last six months. These kinds of activities -- all of which are designed to ensure that Congress has the information it needs on homeland security policy -- will continue in the future.

In your letter, you request that Governor Ridge formally testify before your Committee. The long-standing position of Presidents of both parties, a position long respected by Congress, is that members of the President's staff do not ordinarily testify before congressional committees. This position has long applied to Presidential advisors such as the Chief of Staff, the Counsel, the National Security Advisor, and the other immediate advisors to the President such as Governor Ridge. Therefore, we respectfully must decline your invitation for Governor Ridge to formally testify before the Committee, but also wish to emphasize that Governor Ridge and others in the Executive Branch remain available to meet with you and your entire Committee. Additionally,

Senator Stevens
March 13, 2002
Page 2

Governor Ridge, White House Counsel Alberto Gonzales, and I would be happy to meet with you about this matter at your convenience.

Sincerely,



Nicholas E. Calio
Assistant to the President
for Legislative Affairs

The Honorable Ted Stevens
Ranking Member
Senate Appropriations Committee
United States Senate
Washington, DC 20510

Identical letter sent to Chairman Robert C. Byrd

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

FRC ID:

9696

FOIA IDs and Segments:

2014-0216-F 1

OA Num.:

2166

NARA Num.:

2077

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

CRS Report for Congress

Received through the CRS Web

Presidential Advisers' Testimony Before Congressional Committees: A Brief Overview

FYI →
TO: Judge Gonzales
Jim Flanigan
Brett Kavanaugh
FR: M. Mally

April 5, 2002

Harold C. Relyea
Specialist in American National Government
Government and Finance Division

Jay R. Shampansky
Legislative Attorney
American Law Division

Presidential Advisers' Testimony Before Congressional Committees: A Brief Overview

Summary

Since the beginning of the federal government, Presidents have called upon executive branch officials to provide them with advice regarding matters of policy and administration. While Cabinet members were among the first to play such a role, the creation of the Executive Office of the President (EOP) in 1939 and the various agencies located within that structure resulted in a large increase the number and variety of presidential advisers. All senior staff members of the White House Office and the leaders of the various EOP agencies and instrumentalities could be said to serve as advisers to the President.

Occasionally, these executive branch officials playing a presidential advisory role have been called upon to testify before congressional committees and subcommittees. Sometimes, such invited appearances have been prompted by allegations of personal misconduct on the part of the official, but they have also included instances when accountability for policymaking and administrative or managerial actions have instigated the request for testimony. Because such appearances before congressional committees or subcommittees seemingly could result in demands for advice proffered to the President, or the disclosure—inadvertent or otherwise—of such advice, there has been resistance, from time to time, by the Chief Executive to allowing such testimony.

Congress has a constitutionally rooted right of access to the information it needs to perform its Article I legislative and oversight functions. Generally, a congressional committee with jurisdiction over the subject matter, which is conducting an authorized investigation for legislative or oversight purposes, has a right to information held by the executive branch in the absence of either a valid claim of constitutional privilege by the executive or a statutory provision whereby Congress has limited its constitutional right to information.

A congressional committee may request (informally, or by a letter from the committee chair, perhaps co-signed by the ranking Member) or demand (pursuant to subpoena) the testimony of a presidential adviser. However, Congress may encounter legal and political problems in attempting to enforce a subpoena to a presidential adviser. Conflicts concerning congressional requests or demands for executive branch testimony or documents often involve extensive negotiations and may be resolved by some form of compromise as to, *inter alia*, the scope of the testimony or information to be provided to Congress.

Contents

Executive Office of the President	4
Presidential Adviser Growth	5
Presidential Adviser Testimony	7
Presidential Adviser Testimony Refused	11
Why Presidential Advisers Do Not Regularly Testify	
Before Committees	12
Congress's Right to Executive Branch Information	13
Procedure for Obtaining Executive Branch Testimony	17
Conclusion	18

Presidential Advisers' Testimony Before Congressional Committees: A Brief Overview

Since the beginning of the federal government, Presidents have called upon executive branch officials to provide them with advice regarding matters of policy and administration. The Constitution recognized such relationships when it authorized the President, in Article II, section 2, to "require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices." There were, as well, reasons to expect that such advice, whether offered orally or in writing, would be held in confidence. The advice was for the President's consideration and his decisionmaking. The matters involved were sensitive, perhaps bearing upon the foreign, military, economic, or law enforcement policy of the nation. Also, the provision, discussion, and use of such advice by the executive branch could affect its relationships with the other coequal constitutional branches. President George Washington and his Cabinet had these considerations in mind, as Secretary of State Thomas Jefferson's notes on their deliberations reflect, when they decided upon a response to a 1792 congressional request for information.

We had all considered, and were of one mind, first, that the House was an inquest, and therefore might institute inquiries. Second that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public; consequently were to exercise a discretion. Fourth, that neither the committee nor House had a right to call on the Head of a Department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President....¹

The Cabinet, composed of the principal officers in each of the executive departments, failed, for several reasons, to develop as an important source of presidential advice. The department heads constituting the Cabinet were often chosen to satisfy interests that contributed significantly to the President's election. Considerations of partisanship, ideology, geography, public image and stature, and aptitude, among others, figured prominently in their selection. Sometimes the President was not personally well acquainted with these individuals and had only minimal confidence and trust in them. In a few cases, a political rival was included in the Cabinet.

It is also very likely that some activist Presidents were ill suited to the group deliberation of the Cabinet. Similarly, many Cabinet members might have felt

¹ Andrew A. Lipscomb and Albert Ellery Bergh, eds., *The Writings of Thomas Jefferson*, vol. 1 (Washington: Thomas Jefferson Memorial Association, 1903), pp. 303-304.

unqualified, or were unwilling, to offer counsel to the President on matters outside of their immediate portfolios; their advice was perhaps limited to, and protective of, departmental interests. Finally, personal hostilities between or among department heads could result in such tumult within the Cabinet that little useful advice could be gained.

Consequently, Presidents generally looked to other quarters for advisers. One development in this regard was the creation of circles of advisers composed of both public officials and private citizens. President Andrew Jackson, whose election and White House tenure occurred in an era marked by violent political controversy and party instability, utilized an informal group of advisers which came to be known as the Kitchen Cabinet. The members represented "rising social groups as yet denied the prestige to which they felt their power and energies entitled them"—newspapermen, the President's private secretary, campaign organizers and officials from prior administrations, and longtime personal friends.²

When John Tyler succeeded to the presidency upon the death of William Henry Harrison, he revived Jackson's practice. Deserted by Whigs and Democrats alike, Tyler resorted to a select circle of advisers composed of personal and political friends from his native Virginia—a college president, a state supreme court judge, four members of the state's delegation in the House of Representatives, and a Senator.³ Following this practice, several succeeding Presidents had informal groups of advisers that were given colorful names by the press. For example, for Grover Cleveland, it was a Fishing Cabinet; for Theodore Roosevelt, a Tennis Cabinet; for Warren G. Harding, a Poker Cabinet; and for Herbert Hoover, a Medicine Ball Cabinet.

Jackson's inclusion of his personal secretary in his Kitchen Cabinet reflects another line of development regarding presidential advisers. Beginning with Washington, Presidents sought to meet the demands of their office with the assistance of a single personal secretary, usually a relative, compensated from their own private resources. In 1833, Congress authorized the President to appoint, with the advise and consent of the Senate, a secretary "whose duty it shall be, under the direction of the President, to sign in his name and for him, all patents for lands sold or granted under the authority of the United States."⁴ Jackson named Andrew Jackson Donelson, his wife's nephew and current personal secretary, to this position, relieving himself of continued personal compensation of the young man. Ultimately, Congress appropriated funds to the Chief Executive in 1857 for an official household—a personal secretary, a steward to supervise the Executive Mansion, and a messenger.⁵

Many years later, in 1929, Congress was persuaded to authorize an increase in the President's top personnel, adding two more secretaries and an administrative

²Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston, MA: Little, Brown, 1945), p. 67.

³Louis W. Koenig, *The Invisible Presidency* (New York: Rinehart, 1960), p. 40.

⁴4 Stat. 633.

⁵11 Stat. 228.

assistant.⁶ Appointed to these senior staff positions were presidential lieutenants, if not presidential intimates and advisers. When Franklin D. Roosevelt came to the presidency in 1933, he brought with him, from his New York gubernatorial experience, a new kind of advisory circle, composed of intellectuals, or at least a core group of Columbia University professors who were joined by other ideas people to form the "Brains Trust." Because there were an insufficient number of staff positions at the White House to accommodate them, these advisers were placed elsewhere in the executive branch, but, for the most part, directly served the President.⁷

This staffing situation, coordination problems, and the development of a new administrative management concept prompted Roosevelt to create, by announcement, a study panel—the President's Committee on Administrative Management, under the leadership of Louis Brownlow, a prominent public administration practitioner—in 1936 to examine and make recommendations regarding these matters.⁸ Reporting some 10 months later, the Brownlow committee addressed presidential staffing in dramatic and detailed terms.

The President needs help. His immediate staff assistance is entirely inadequate. He should be given a small number of executive assistants who would be his direct aides in dealing with the managerial agencies and administrative departments of the government. These assistants, probably not exceeding six in number, would be in addition to the present secretaries, who deal with the public, with the Congress, and with the press and radio. These aides would have no power to make decisions or issue instructions in their own right. They would not be interposed between the President and the heads of his departments. They would not be assistant presidents in any sense. Their function would be, when any matter was presented to the President for action affecting any part of the administrative work of the Government, to assist him in obtaining quickly and without delay all pertinent information possessed by any of the executive departments so as to guide him in making his responsible decisions; and then when decisions have been made, to assist him in seeing to it that every administrative department and agency affected is promptly informed. Their effectiveness in assisting the President will, we think, be directly proportional to their ability to discharge their functions with restraint. They would remain in the background, issue no orders, make no decisions, emit no public statements. Men for these positions should be carefully chosen by the President from within and without the Government. They should be men in whom the President has personal confidence and whose character and attitude is [sic] such that they would not attempt to exercise power on their own account. They should be possessed of high competence, great physical vigor, and a passion for anonymity. They should be installed in the White House itself, directly accessible to the President. In the selection of these aides, the President should be free to call on departments from time to time for the assignment of

⁶45 Stat. 1230.

⁷See Rexford G. Tugwell, *The Brains Trust* (New York: Viking, 1968).

⁸Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt, Volume 5: The People Approve, 1936* (New York: Random House, 1938), p. 144.

persons who, after a tour of duty as his aides, might be restored to their old positions.⁹

In addition to the proposed addition of six assistants to the President's staff, the committee's report also recommended vesting responsibility in the President for the continuous reorganization of the executive branch. Released to Congress on January 12, 1937, the report soon became lost in high politics. Three weeks after submitting the Brownlow committee's report to Congress, Roosevelt announced he wanted to enlarge the membership of the Supreme Court. His "court packing" plan not only fed congressional fears of a presidential power grab, but also so preoccupied Congress that the Brownlow committee's recommendations were ignored.

Executive Office of the President

Although efforts at gaining legislative approval of the Brownlow committee's recommendations lay in ruin in the spring of 1938, the President had not deserted the cause. By July, Roosevelt was meeting with Brownlow and the other committee members. The panel would not be officially reassembled, but he wanted each man's help with a reorganization authority proposal. The resulting measure empowered the President to propose reorganization plans, subject to a veto by a majority vote of disapproval in both houses of Congress, and to also appoint six administrative assistants.

After three days of discussion and debate, the House adopted the bill on March 8, 1939. Twelve days later, the Senate began considering the proposal. Following two days of sparring over amendments, the Senate adopted the bill. A quick conference cleared the measure for Roosevelt's signature on April 3.¹⁰ Earlier, the President had asked the Brownlow committee members to assist with the preparation of his initial reorganization plans.¹¹

Following consultations with Budget Bureau Director Harold D. Smith, the Brownlow group presented two reorganization proposals to Roosevelt on April 23. Plan 1, submitted to Congress on April 25, transferred certain agencies to the Executive Office of the President, but offered no explanation of that entity.¹² In Plan 2, a presidential emergency council was abolished and most of its functions were transferred to the Executive Office.¹³ While both plans were acceptable to legislators, their effective dates were troublesome in terms of accommodating fiscal calendar necessities. By joint resolution, Congress provided that both plans would be effective

⁹U.S. President's Committee on Administrative Management, *Report of the President's Committee* (Washington: GPO, 1937), p. 5.

¹⁰53 Stat. 561.

¹¹Richard Polenberg, *Reorganizing Roosevelt's Government* (Cambridge, MA: Harvard University Press, 1966), pp. 184-187.

¹²53 Stat. 1423.

¹³53 Stat. 1431 at 1435.

on July 1, 1939.¹⁴ Following this action, the President, on September 8, issued E.O. 8248, formally organizing the Executive Office and, thereby, defining it in terms of its components.¹⁵ Brownlow, who drafted the initial reorganization plan, viewed the Executive Office as the institutional realization of administrative management and “the effective coordination of the tremendously wide-spread federal machinery.” He called the initial version “a little thing” compared to its later size. It grew under Roosevelt and “it continued to expand and was further regularized by statute, by appropriation acts, and by more reorganization plans” during the succeeding years.¹⁶

The Executive Office organized by E.O. 8248 consisted of the White House Office, the Bureau of the Budget, the National Resources Planning Board, the Office of Government Reports, and the Liaison Office for Personnel Management. It also provided that, “in the event of a national emergency,” there could be established “such office for emergency management as the President shall determine.” The Office for Emergency Management was created by an administrative order on May 25, 1940, and its functions were further specified in an administrative order of January 7, 1941.¹⁷ It subsequently served as a parent unit for a number of subordinate emergency management bodies.

Presidential Adviser Growth

The creation of the Executive Office of the President contributed to an increase in the number of presidential advisers for several reasons. First, it provided an enclave for various agencies that immediately assisted the President. Primary among these was the White House Office, which was no longer merely the President’s small office staff, but an agency with hierarchically organized staff positions whose personnel rapidly expanded during the next few decades.

Second, it counted agencies, such as the Liaison Office for Personnel Management and the Office for Emergency Management, that were headed by an administrative assistant—and adviser—to the President on the White House Office payroll. It also included agencies, such as the Bureau of the Budget (and its Office of Management and Budget successor), that were headed by leaders for whom advising the President was a primary responsibility.

Third, senior White House Office staff would come to supervise and direct the staff of other Executive Office entities: the Assistant to the President for National Security Affairs would direct the National Security Council staff and the Assistant to the President for Domestic Policy would direct the Domestic Council staff.

Fourth, in January 1973, President Richard M. Nixon vested his Secretary of the Treasury and his director of the Office of Management and Budget with dual White

¹⁴53 Stat. 813.

¹⁵3 C.F.R., 1938-1943 Comp., pp. 576-579.

¹⁶Louis Brownlow, *A Passion for Anonymity: The Autobiography of Louis Brownlow, Second Half* (Chicago, IL: University of Chicago Press, 1958), p. 416.

¹⁷3 C.F.R., 1938-1943 Comp., pp. 1320-1321.

House Office positions, respectively, of Assistant to the President for Economic Affairs and Assistant to the President for Executive Management. He also vested his Secretary of Agriculture, Secretary of Health, Education, and Welfare, and Secretary of Housing and Urban Development with dual White House Office positions, respectively, of Counsellor to the President for Natural Resources, Counsellor to the President for Human Resources, and Counsellor to the President for Community Development.¹⁸ Having such dual White House Office titles was viewed as giving added emphasis, if not authority, to the role of these officials as presidential advisers.

In the aftermath of World War II, Congress statutorily chartered most of the agencies within the Executive Office of the President. Furthermore, Congress routinely appropriated funds for the operating expenses of these entities. In 1944, Congress had adopted an amendment to an appropriation bill that was designed to restrain the creation of Executive Office agencies by executive order—a frequent occurrence during 1941-1944. The amendment stated:

After January 1, 1945, no part of any appropriation or fund made available by this or any other Act shall be allotted or made available to, or used to pay the expenses of, any agency or instrumentality including those established by Executive order after such agency or instrumentality has been in existence for more than one year, if the Congress has not appropriated any money specifically for such agency or instrumentality or specifically authorized the expenditure of funds by it.¹⁹

In 1982, when Title 31 of the United States Code was recodified, the amendment was repealed and replaced with new language at section 1347.²⁰ The opening sentence of the new section, which remains as operative law, states: “An agency in existence for more than one year may not use amounts otherwise available for obligation to pay its expenses without a specific appropriation or specific authorization by law.”

With their growing number and influence, senior staff members of the White House Office and certain other Executive Office agencies began to become of interest to congressional committees when accountability for policymaking and administrative or managerial actions prompted requests for their testimony. Some, like War Production Board chairman Donald M. Nelson,²¹ who was popularly known as the “arms czar,” appeared before and cooperated with the Senate Special Committee to Investigate the National Defense Program (“Truman Committee”) during World War

¹⁸*Weekly Compilation of Presidential Documents*, vol. 9, Jan. 8, 1973, p. 7.

¹⁹58 Stat. 387.

²⁰96 Stat. 877 at 925, 1076.

²¹Established by E.O. 9024 of Jan. 16, 1942, the War Production Board was technically located within the Office for Emergency Management, an agency within the Executive Office of the President, but it operated independently as an arm of the President. The chairman of the board was presidentially appointed without Senate confirmation; eight other specified government officials were members of the board. The board was terminated by E.O. 9638 of Oct. 4, 1945.

II to report on and discuss war material production and related coordination matters.²² Others, like Office of War Mobilization director James F. Byrnes, who was sometimes referred to as the “assistant president,” apparently avoided appearing before congressional committees during the World War II era, but were in communication with various individual Members of Congress in leadership positions and served as liaisons between the President and Congress on a number of war matters.²³

Presidential Adviser Testimony

Beginning with the closing years of World War II, examples are provided below of instances when a presidential adviser—a civilian executive branch official, other than a member of the traditional Cabinet, who, as part of that official’s responsibilities and activities, consulted with the President—testified before a congressional committee or subcommittee. Because these consultations with the President by such an official may be considered by the President to be privileged and constitutionally protectable, examples are also provided of instances when invited congressional committee or subcommittee testimony by a presidential adviser was refused. None of the examples involves testimony or refusal to testify by a former presidential adviser.

- Jonathan Daniels, Administrative Assistant to the President, White House Office, appeared before the Senate Committee on Agriculture and Forestry on February 28 and March 7 and 8, 1944, to discuss his involvement in the personnel policy of the Rural Electrification Administration.²⁴
- Wallace H. Graham, Physician to the President, White House Office, appeared before the Senate Committee on Appropriations on January 13, 1948, to discuss information to which he might have been privy with regard to the commodity market.²⁵
- Harry H. Vaughn, Military Aide to the President, White House Office, appeared before the Senate Committee on Expenditures in Executive Departments (now Governmental Affairs) on August 30 and 31, 1949, to

²²Donald M. Nelson, *Arsenal of Democracy: The Story of American War Production* (New York: Harcourt, Brace, 1946), pp. 128, 332; Donald H. Riddle, *The Truman Committee: A Study in Congressional Responsibility* (New Brunswick, NJ: Rutgers University Press, 1964), pp. 36, 70, 83-84.

²³Herman Miles Somers, *Presidential Agency: The Office of War Mobilization and Reconversion* (Cambridge, MA: Harvard University Press, 1950), p. 74.

²⁴U.S. Congress, Senate Committee on Agriculture and Forestry, *Administration of the Rural Electrification Act*, hearings, 78th Cong., 2nd sess. (Washington: GPO, 1944), pp. 611ff, 695ff, 721ff.

²⁵U.S. Congress, Senate Committee on Appropriations, *Speculation in Commodity Markets*, hearings, 80th Cong., 2nd sess. (Washington: GPO, 1948), pp. 49ff.

discuss his personal involvement in certain government procurement contracts.²⁶

- Donald S. Dawson, Administrative Assistant to the President, White House Office, appeared before the Senate Committee on Banking and Currency on May 10 and 11, 1951, to discuss allegations he had attempted to “dominate” the Reconstruction Finance Corporation and influence appointments to that body.²⁷
- Sherman Adams, Assistant to the President, White House Office, appeared before the House Committee on Interstate and Foreign Commerce Committee on June 17, 1958, to discuss his involvement with certain lobbyists.²⁸
- Edward E. David, Jr., Science Adviser to the President, White House Office, and director, Office of Science and Technology, appeared before the Senate Committee on Interior and Insular Affairs on June 15, 1971, to discuss the Nixon Administration’s position on energy policy matters; he appeared again before the House Committee on Science and Astronautics on June 14, 1972, to discuss science policy matters relating to Soviet-American cooperation agreements.²⁹
- Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, White House Office, and director, Office of Consumer Affairs, appeared before the House Select Committee on Small Business on June 25, 1971, to discuss consumer protection and advertising standards.³⁰
- Jerome H. Jaffe, Special Consultant to the President, White House Office, and director, Special Action Office for Drug Abuse Prevention, appeared before the House Committee on Interstate and Foreign Commerce on June 28,

²⁶U.S. Congress, Senate Committee on Expenditures in the Executive Departments, *Influence in Government Procurement*, hearings, 81st Cong., 1st sess. (Washington: GPO, 1949), pp. 495ff, 563ff.

²⁷U.S. Congress, Senate Committee on Banking and Currency, *Study of Reconstruction Finance Corporation*, hearings, 82nd Cong., 1st sess. (Washington: GPO, 1951), pp. 1709ff, 1795ff.

²⁸U.S. Congress, House Committee on Interstate and Foreign Commerce, *Investigation of Regulatory Commissions and Agencies*, hearings, 85th Cong., 2nd sess. (Washington: GPO, 1958), p. 3712 ff.

²⁹U.S. Congress, Senate Committee on Interior and Insular Affairs, *The President’s Energy Message*, hearings, 92nd Cong., 1st sess. (Washington: GPO, 1971), p. 12ff; U.S. Congress, House Committee on Science and Astronautics, *U.S.-U.S.S.R. Cooperative Agreements*, hearings, 92nd Cong., 2nd sess (Washington: GPO, 1972), p. 60ff.

³⁰U.S. Congress, House Select Committee on Small Business, *Advertising and Small Business*, hearings, 92nd Cong., 1st sess. (Washington: GPO, 1971), p. 567ff.

August 2, October 27, and November 8, 1971, to discuss various aspects of the operations of the Special Action Office.³¹

- Peter Flanigan, Assistant to the President, White House Office, appeared before the Senate Committee on the Judiciary on April 20, 1972, during the course of hearings on the confirmation of Richard Kleindienst as Attorney General to discuss his involvement in apparent lobbying activities by the International Telephone and Telegraph Company.³²
- Bruce A. Kehrli, Special Assistant to the President, White House Office, appeared before the Senate Select Committee on Presidential Campaign Activities on May 17, 1973, to discuss matters related to the Watergate incident.³³
- Patrick J. Buchanan, Special Consultant to the President, White House Office, appeared before the Senate Select Committee on Presidential Campaign Activities on September 26, 1973, to discuss matters related to the Watergate incident.³⁴
- Richard M. Harden, Special Assistant to the President, White House Office, appeared before the Senate Appropriations Subcommittee on Treasury, Postal Service, and General Government on March 9, 1977, to discuss funds for the White House Office; he appeared again before the House Appropriations Subcommittee on Treasury, Postal Service, and General Government on March 15, 1977, to discuss these same matters.³⁵
- Rose Mary Woods, Personal Secretary to the President, White House Office, appeared before the Senate Select Committee on Presidential Campaign Activities on March 22, 1974, to discuss matters related to the Watergate incident.³⁶

³¹U.S. Congress, House Committee on Interstate and Foreign Commerce, *Special Action Office for Drug Abuse Prevention*, hearings, 92nd Cong., 1st sess. (Washington: GPO, 1971), pp. 171ff, 1037ff, 1443, 1578ff.

³²U.S. Congress, Senate Committee on the Judiciary, *Nominations of Richard G. Kleindienst and L. Patrick Gray III*, hearings, 92nd Cong., 2nd sess (Washington: GPO, 1972), p. 1585ff.

³³U.S. Congress, Senate Select Committee on Presidential Campaign Activities, *Presidential Campaign Activities of 1972*, hearings, 93rd Cong., 1st sess. (Washington: GPO, 1973), p. 75ff.

³⁴*Ibid.*, p. 3899ff.

³⁵U.S. Congress, Senate Committee on Appropriations, *Treasury, Postal Service, and General Government Appropriations: Fiscal Year 1978*, hearings, 95th Cong., 1st sess. (Washington: GPO, 1977), p. 1021ff; U.S. Congress, House Committee on Appropriations, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1978*, hearings, 95th Cong., 1st sess. (Washington: GPO, 1977), p. 77ff.

³⁶U.S. Congress, Senate Select Committee on Presidential Campaign Activities, *Presidential Campaign Activities of 1972*, hearings, 93rd Cong., 2nd sess. (Washington: GPO, 1974), p. (continued...)

- J. Frederick Buzhardt, Special Counsel to the President, White House Office, appeared before the Senate Select Committee on Presidential Campaign Activities on April 10 and May 7, 1974, to discuss matters related to the Watergate incident.³⁷
- Alexander M. Haig, Jr., Staff Coordinator to the President, White House Office, appeared before the Senate Select Committee on Presidential Campaign Activities on May 2, and 15, 1974, to discuss matters related to the Watergate incident.³⁸
- Leonard Garment, Assistant to the President, White House Office, appeared before the Senate Select Committee on Presidential Campaign Activities on May 17, 1974, to discuss matters related to the Watergate incident.³⁹
- Lloyd Cutler, Counsel to the President, White House Office, appeared before the Senate Judiciary Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments on September 10, 1980, to discuss efforts by the President's brother, Billy Carter, to influence the federal government on behalf of the government of Libya.⁴⁰
- Zbigniew Brzezinski, Assistant to the President for National Security Affairs, White House Office, appeared before the Senate Judiciary Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments on September 17, 1980, to discuss efforts by the President's brother, Billy Carter, to influence the federal government on behalf of the government of Libya.⁴¹
- Samuel Berger, Deputy Assistant to the President for National Security Affairs, White House Office, appeared before the Senate Committee on Foreign Relations on May 3, 1994, to provide a briefing on United States policy toward Haiti.⁴²
- Samuel Berger, Assistant to the President for National Security Affairs, White House Office, appeared before the Senate Committee on Governmental Affairs

³⁶(...continued)
10193ff.

³⁷Ibid., pp. 10539ff, 10877ff.

³⁸Ibid., pp. 10849ff, 10998ff.

³⁹Ibid., p. 11053ff.

⁴⁰U.S. Congress, Senate Committee on the Judiciary, *Inquiry into the Matter of Billy Carter and Libya*, hearings, 96th Cong., 2nd sess. (Washington: GPO, 1981), p. 1195ff.

⁴¹Ibid., p. 1339ff.

⁴²*Congressional Record*, Daily Digest, vol. 140, May 3, 1994, p. D245.

on September 11, 1997, concerning campaign fund-raising practices in connection with the 1996 federal election campaign.⁴³

Presidential Adviser Testimony Refused

Beginning with the years immediately after the conclusion of World War II, examples are provided below of instances when invited congressional committee or subcommittee testimony by a presidential adviser was refused.

- John R. Steelman, Assistant to the President, White House Office, declined in March 1948 to appear before a special subcommittee of the House Committee on Education and Labor.⁴⁴
- Herbert G. Klein, Director of White House Communications, White House Office, declined on September 21, 1971, to appear before the Senate Judiciary Subcommittee on Constitutional Rights.⁴⁵
- Frederick V. Malek, Special Assistant to the President, White House Office, and Charles W. Colson, Special Counsel to the President, White House Office, declined in December 1971 to appear before the Senate Judiciary Subcommittee on Constitutional Rights.⁴⁶
- Henry A. Kissinger, Assistant to the President for National Security Affairs, declined on February 28, 1972, to appear before the Senate Committee on Foreign Relations.⁴⁷

⁴³U.S. Congress, Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with the 1996 Federal Election Campaign*, hearings, 105th Cong., 1st sess. (Washington: GPO, 1998), p. 204ff.

⁴⁴U.S. Congress, House Committee on Education and Labor, *Investigation of the GSA Strike*, hearings, 80th Cong., 2nd sess. (Washington: GPO, 1948), pp. 347-353.

⁴⁵U.S. Congress, Senate Committee on the Judiciary, Freedom of the Press, hearings, 92nd Cong., 1st and 2nd sess. (Washington: GPO, 1972), p. 1299.

⁴⁶*Ibid.*, p. 425.

⁴⁷*Congressional Record*, vol. 118, Mar. 28, 1972, p. 10471; Kissinger "occasionally talked on the phone, or privately met, with top legislative leaders, briefed them at pro forma consultations before major military actions or on the occasion of big diplomatic agreements, and once in a while informally briefed larger congressional groups. Kissinger would go to the Hill, incognito as it were, a couple of times a year and he might entertain a congressional group in the OEOB [Old Executive Office Building] maybe once a year. In some of the sessions that did occur the Congress was misinformed on key issues ... in the cases of the Vietnam peace agreement and the first SALT agreements with the Soviets." John Prados, *Keepers of the Keys: A History of the National Security Council from Truman to Bush* (New York: William Morrow, 1991), p. 309.

- David Young, Special Assistant to the National Security Council, declined on April 29, 1972, to appear before the House Government Operations Subcommittee on Foreign Operations and Government Information.⁴⁸

Why Presidential Advisers Do Not Regularly Testify Before Committees

“Although White House aides do not testify before congressional committees on a regular basis,” it has been observed, “under certain conditions they do. First, intense and escalating political embarrassment may convince the White House that it is in the interest of the President to have these aides testify and ventilate the issue fully. Second, initial White House resistance may give way in the face of concerted congressional and public pressure.”⁴⁹

Given the comity between the executive and legislative branches, Congress often elects not to request the appearance of presidential aides.⁵⁰ When Congress has requested the appearance of such aides, Presidents and their aides have at times resisted, asserting the separation of powers doctrine and/or executive privilege.⁵¹ These two grounds for declining to comply with congressional requests for the appearance of presidential aides overlap, and it is sometimes difficult to determine which argument is being raised.⁵²

⁴⁸U.S. Congress, House Committee on Government Operations, *U.S. Government Information Policies and Practices—Security Classification Problems Involving (b)(1) of the Freedom of Information Act*, hearings, 92nd Cong., 2nd sess. (Washington: GPO, 1972), p. 2453.

⁴⁹Louis Fisher, “White House Aides Testifying before Congress,” *Presidential Studies Quarterly*, vol. 27, Winter 1997, p. 139.

⁵⁰*Ibid.*, p. 151.

⁵¹*Ibid.*, pp. 140-141.

⁵²In two instances during the Carter Administration, when presidential advisers declined to appear before committees, objections were raised which are difficult to categorize. See Mark J. Rozell, “Executive Privilege and the Modern Presidents: In Nixon’s Shadow,” *Minnesota Law Review*, vol. 83, May 1999, pp. 1069, 1090-1091, 1092.

Recently, the Bush Administration has resisted congressional attempts to secure the testimony of Tom Ridge, the Assistant to the President for Homeland Security. The Administration has invoked the separation of powers doctrine (“Ridge Will Not Give Congress His Testimony,” *USA Today*, Mar. 25, 2002, p. 7A), and stated that Ridge would not appear because he was a presidential adviser, not a Cabinet officer, and because he was not confirmed by the Senate. The Bush Administration also has contended that the President, rather than Congress, oversees a presidential adviser who is not confirmed by the Senate. “A Nation Challenged: Congressional Hearings,” *New York Times*, Mar. 5, 2002, p. 8; “Congress, White House Fight Over Ridge Status,” *Washington Post*, Mar. 21, 2002, p. A33. However, some Members have argued that Ridge’s position is new and unique, and that he has influence over multiple departments whose budgets are subject to Congress’s power of the purse. “Backlash Grows Against White House Secrecy,” *Christian Science Monitor*, Mar. 25, 2002, p. 3.

President Richard M. Nixon contended: "Under the doctrine of separation of powers, the manner in which the President personally exercises his assigned executive powers is not subject to questioning by another branch of Government. If the President is not subject to such questioning, it is equally appropriate that members of his staff not be so questioned, for their roles are in effect an extension of the Presidency."⁵³

The separation of powers doctrine was also cited in guidelines for White House staff issued during the Carter Administration as the basis for the "immunity" of the staff from appearing before committees.⁵⁴ The guidelines "articulated the traditional arguments against compulsory testimony to Congress by White House advisers (*i.e.*, need for 'frank and candid discussions,' personal advisers are agents of the President)."⁵⁵

Executive privilege was invoked during the Nixon Administration when congressional committees sought the testimony of a White House aide at a Senate confirmation hearing⁵⁶ and the testimony of the White House Counsel at Senate committee hearings on the Watergate incident and related matters.⁵⁷

Congress's Right to Executive Branch Information

Congress has a constitutionally rooted right of access to the information it needs to perform its Article I legislative and oversight functions.⁵⁸ Generally, a congressional

⁵³Fisher, "White House Aides Testifying before Congress," p. 140 (quoting *Public Papers of the President, 1973* (Washington: GPO, 1975), at p. 160). The separation of powers doctrine was also cited by the Carter Administration as the rationale for White House advisers not appearing before Congress. Rozell, "Executive Privilege and the Modern Presidents: In Nixon's Shadow," pp. 1091-1092.

⁵⁴Rozell, "Executive Privilege and the Modern Presidents: In Nixon's Shadow," p. 1091 and note 116 (citing to memorandum of February 8, 1979, from Robert Lipshutz to White House staff).

⁵⁵*Ibid.*, p.1091 and note 15 (citing to Lipshutz memorandum).

⁵⁶Fisher, "White House Aides Testifying before Congress," p. 140.

⁵⁷*Ibid.*, pp. 140-141.

⁵⁸See *McGrain v. Daugherty*, 273 U.S. 135, 177, 181-82 (1927). In a frequently quoted passage, the Court explained, at p. 174:

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was

(continued...)

committee with jurisdiction over the subject matter, which is conducting an authorized investigation for legislative or oversight purposes, has a right to information held by the executive branch in the absence of either a valid claim of constitutional privilege by the executive or a statutory provision whereby Congress has limited its constitutional right to information.⁵⁹

Efforts by congressional committees to obtain information from the executive branch are sometimes met with assertions of executive privilege.⁶⁰ No decision of the Supreme Court resolves the question of whether there are any circumstances in which the executive branch can refuse to provide information sought by Congress on the basis of executive privilege, but the caselaw offers some guidance for committees when the privilege is asserted. In upholding a judicial subpoena in *United States v. Nixon*,⁶¹ the Supreme Court found a constitutional basis for the doctrine of executive privilege,⁶² rejected the President's contention that the privilege was absolute,⁶³ and balanced the President's need for confidentiality and the judiciary's need for the materials in a criminal proceeding.⁶⁴

⁵⁸(...continued)

regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

See also *Watkins v. United States*, 354 U.S. 178, 200 note 33 (1957). For a more detailed discussion of the constitutional and statutory authority for congressional access to information and for an examination of related issues, see CRS Report RL30240, *Congressional Oversight Manual*.

⁵⁹For a detailed review of Congress's right of access to information from the executive, see CRS Report 95-464, *Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry*, by Morton Rosenberg.

⁶⁰For a more detailed analysis of the doctrine of executive privilege in the context of congressional investigations, see CRS Report RL30319, *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*, by Morton Rosenberg.

⁶¹418 U.S. 683 (1974). The subpoena, issued to the President at the request of the Watergate Special Prosecutor, demanded tape recordings of confidential conversations between the President and his advisors. *Ibid.*, p. 703.

⁶²The Court found the basis in "the supremacy of each branch within its own assigned area of constitutional duties" and in the separation of powers. *Ibid.*, pp. 705, 706. See also *ibid.*, pp. 708, 711.

⁶³*Ibid.*, p. 708. The Court considered presidential communications to be "presumptively privileged" (*ibid.*, p. 705). Because the privilege is not absolute, judicial review is available. *Ibid.*, 708.

⁶⁴*Ibid.*, p. 707. The Court resolved the "competing interests" so as to preserve "the essential functions of each branch." *Ibid.* Under the circumstances of the case, the judicial need for the tapes outweighed the President's "generalized interest in confidentiality" *Ibid.*, p. 713. The Court was careful to limit the scope of its decision (*ibid.*, p. 712 n.19), noting that it was
(continued...)

A distinction has been recognized by the courts between two aspects of executive privilege—the presidential communications privilege and the deliberative process privilege.⁶⁵ The former has a constitutional basis in the separation of powers doctrine, relates to “direct decisionmaking by the President,” and concerns “quintessential and non-delegable powers,”⁶⁶ whereas the latter “is primarily a common law privilege” applicable “to decisionmaking of executive officials generally.”⁶⁷ The former applies to entire documents (including factual material) and “covers final and post-decisional materials as well as pre-deliberative ones.”⁶⁸ The latter covers predecisional and deliberative materials, not “purely factual [material], unless the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government’s

⁶⁴(...continued)

not addressing a case involving a congressional demand for information or a case involving the President’s interest in preserving state secrets. The Court appeared to be willing to accord greater protection to “military, diplomatic, or sensitive national security secrets” (*ibid.*, p. 706) than it was to a President’s communications with his advisers.

United States v. Nixon did not involve a presidential claim of executive privilege in response to a congressional subpoena. In *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725 (D.C.Cir. 1974), the court reviewed the President’s assertion of executive privilege as grounds for not complying with a committee subpoena for tape recordings of conversations between the President and his staff. The court found that “the presumption that the public interest favors confidentiality [in presidential communications] can be defeated only by a strong showing of need by another institution of government” *Ibid.*, p. 730. Under the unusual circumstances of that case, the court found that the legislative and oversight needs of the committee were insufficient to overcome the claim of privilege. *Ibid.*, p. 732.

⁶⁵*In re Sealed Case (Espy)*, 121 F.3d 729 (D.C.Cir. 1997). For an analysis of *Espy*, see Rozell, “Executive Privilege and the Modern Presidents: In Nixon’s Shadow,” pp. 1119-1120.

⁶⁶*Espy*, 121 F.3d at 745, 752. It has been held that the presidential communications privilege “extends to communications authored by or solicited and received by presidential advisers” when “preparing advice for the President,” “even when these communications are not made directly to the President.” *Ibid.*, pp. 751-752, 762. However, to limit the privilege to its purpose (protecting “the confidentiality of the President’s decisionmaking process”), it is restricted to White House advisers with “operational proximity” to the President. *Ibid.*, p. 752.

At issue in *Espy* was a grand jury subpoena for documents pertaining to an investigation by the White House Counsel. The *Espy* court emphasized that its “opinion should not be read as in any way affecting the scope of the [presidential communications] privilege in the congressional-executive context” *Ibid.*, p. 753. Furthermore, the court in *Espy* noted that its “determination of how far down into the executive branch the presidential communications privilege goes” was limited to the circumstances of the case. *Ibid.*

Arguably, the privilege must be asserted by the President personally. *Ibid.*, p. 745 note 16 (collecting cases).

⁶⁷*Ibid.*, p. 745.

⁶⁸*Ibid.*

deliberations.”⁶⁹ Both privileges are qualified.⁷⁰ When either privilege is asserted, the court will balance the public interests involved and assess the need of the party seeking the privileged information.⁷¹

The range of executive branch officials who may appropriately assert executive privilege before congressional committees, and the circumstances under which they may do so, remains unresolved by the courts,⁷² and is a matter that may be determined by case-by-case accommodation between the political branches.⁷³ Some guidance in this regard was offered by Chief Justice William Rehnquist, when he was Assistant Attorney General in the Nixon Administration. Rehnquist distinguished between “those few executive branch witnesses whose sole responsibility is that of advising the President,” who “should not be required to appear [before Congress] at all, since all of their official responsibilities would be subject to a claim of privilege,” and “the executive branch witness ... whose responsibilities include the administration of departments or agencies established by Congress, and from whom Congress may quite properly require extensive testimony,” subject to “appropriate” claims of privilege.⁷⁴

Following a review of Rehnquist’s statement, precedents and practice concerning congressional access to executive branch information (particularly, the testimony of presidential advisers), and constitutional issues,⁷⁵ it is possible to suggest some key legal factors that together may determine whether a congressional request for the testimony of one who advises the President will be honored. (1) In the view of the executive, the few individuals whose sole duty is to advise the President should never be required to testify because all of their duties are protected by executive privilege. (2) The executive has conceded that an official who has operational functions in a department or agency established by law may be required to testify, although at times such an official may invoke executive privilege. (3) Congress may increase its leverage if the position of the potential witness is subject to Senate confirmation.

⁶⁹Ibid., p. 737.

⁷⁰Ibid., p. 746. The presidential communications privilege is more difficult to overcome, requiring the party seeking the information to “provide a focused demonstration of need” Ibid. “[T]he [deliberative process] privilege disappears altogether when there is any reason to believe government misconduct occurred [A] party seeking to overcome the presidential privilege seemingly must always provide a focused demonstration of need, even when there are allegations of misconduct by high-level officials.” Ibid.

⁷¹Ibid.

⁷²Cf. *In re Lindsey*, 158 F.3d 1263, 1277-78 (D.C.Cir.) (*dictum*), *cert denied sub nom. Office of the President v. Office of Independent Counsel*, 525 U.S. 996 (1998).

⁷³See Dawn Johnsen, “Executive Privilege Since *United States v. Nixon*: Issues of Motivation and Accommodation,” vol. 83, *Minnesota Law Review*, May 1999, p. 1127ff.

⁷⁴U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Separation of Powers, *Executive Privilege: The Withholding of Information by the Executive*, hearings, 92nd Cong., 1st sess. (Washington: GPO, 1971), p. 427 (hereafter, Rehnquist statement).

⁷⁵See generally Donald S. Onley, “Treading on Sacred Ground: Congress’s Power to Subject White House Advisers to Senate Confirmation,” vol. 37, *William & Mary Law Review*, Spring 1996, p. 1183ff.

Procedure for Obtaining Executive Branch Testimony

A congressional committee may request (informally, or by a letter from the committee chair, perhaps co-signed by the ranking Member) or demand (pursuant to subpoena)⁷⁶ the testimony of a presidential adviser. However, Congress may encounter legal and political problems in attempting to enforce a subpoena to a presidential adviser.

Conflicts concerning congressional requests or demands for executive branch testimony or documents often involve extensive negotiations, and may be resolved by some form of compromise as to, *inter alia*, the scope of the testimony or information to be provided to Congress.⁷⁷ If the executive branch fails to comply with a committee subpoena, and if negotiations do not resolve the matter, the committee may employ Congress's inherent contempt authority (involving a trial at the bar of the Senate or House) or statutory criminal contempt authority in an effort to obtain the needed information.⁷⁸ Both of these procedures are somewhat cumbersome, and their use may not result in the production of the information that is sought.⁷⁹

When faced with a refusal by the executive branch to comply with a demand for information, Congress has several alternatives to inherent and statutory contempt, although these alternatives are not without their own limitations.⁸⁰ One approach is to seek declaratory or other relief in the courts. Previous attempts to seek judicial resolution of inter-branch conflicts over information access issues have encountered procedural obstacles and have demonstrated the reluctance of the courts to resolve

⁷⁶Standing committees of both the Senate (Rule XXVI(1)) and the House (Rule XI, cl. 2(m)) have subpoena power.

⁷⁷See, e.g., Peter M. Shane, "Legal Disagreement and Negotiation in a Government of Laws: The Case of Executive Privilege Claims Against Congress," vol. 71, *Minnesota Law Review* (1987, p. 461ff. See also Fisher, "White House Aides Testifying before Congress," p. 139 (where presidential advisers decline to testify, they might instead meet with committee chair or respond to committee deposition). Recently, in response to congressional attempts to secure the testimony of Ridge (see note 52, *supra*), Ridge offered to brief Members privately, but some Members objected. Subsequently, Ridge offered to brief Members of both the Senate and the House informally, but in public. Ridge argued that his proposal would satisfy congressional needs but "avoid the setting of a precedent that could undermine the constitutional separation of powers and the longstanding traditions and practices of both Congress and the executive branch." "A Nation Challenged: The Security Director," *New York Times*, Mar. 26, 2002, p. 13.

⁷⁸Both the inherent contempt power and the statutory procedure (2 U.S.C. 192, 194) are outlined in CRS Report RL30240, *Congressional Oversight Manual*, pp. 36-37. The statutory civil contempt procedure which may be used by Senate committees is not applicable in the case of an executive branch official. 28 U.S.C. 1365.

⁷⁹See Randall K. Miller, "Congressional Inquests: Suffocating the Constitutional Prerogative of Executive Privilege," vol. 81, *Minnesota Law Review*, February 1997, pp. 631, 658.

⁸⁰For a recent overview and evaluation of the alternatives, see J. Richard Broughton, "Paying Ambition's Debt: Can the Separation of Powers Tame the Impetuous Vortex of Congressional Investigations?," vol. 21, *Whittier Law Review*, 2000, pp. 797, 825-832.

sensitive separation of powers issues.⁸¹ Other approaches may include, *inter alia*, appropriations riders, impeachment, and a delay in the confirmation of presidential appointees.⁸²

In addition to the options generally available in the event of a refusal by the executive to provide information sought by Congress, when a presidential adviser who is not serving in a department or agency declines to testify before a committee, Congress might wish to establish the entity in which he serves by law, and subject the head of the entity to Senate confirmation.⁸³

Conclusion

(1) Legal and policy factors may explain why presidential advisers do not regularly testify before committees. (2) Generally, a congressional committee with jurisdiction over the subject matter, which is conducting an authorized investigation

⁸¹*Senate Select Committee v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974); *United States v. AT&T*, 551 F.2d 384 (D.C. Cir. 1976) and 567 F.2d 121 (D.C. Cir. 1977) (second opinion); *United States v. House of Representatives*, 556 F. Supp. 150 (D.D.C. 1983).

⁸²See, e.g., Broughton, "Paying Ambition's Debt: Can the Separation of Powers Tame the Impetuous Vortex of Congressional Investigations?" pp. 831-835; Louis Fisher, *Constitutional Conflicts between Congress and the President*, 4th ed (Lawrence, KS: University Press of Kansas, 1997), pp. 183-84. In response to the resistance of the Bush Administration to congressional attempts to obtain the testimony of Ridge (see note 52, *supra*), it has been reported that the House Appropriations Committee may delay action on the appropriation for the Executive Office of the President. "Panel Ties Funding to Ridge Testimony," *Washington Times*, Mar. 22, 2002, pp. A1, A14.

⁸³As discussed above (see p. 16, *supra*), an executive branch official who administers a department or agency established by law is generally expected to testify before committees, in contrast to an individual whose sole responsibility is to advise the President. Some presidential advisers are in units of the Executive Office of the President established by law, and are also subject to confirmation by the Senate. See, e.g., 15 U.S.C. 1023 (Council of Economic Advisors); 42 U.S.C. 4321, 4372 (Office of Environmental Quality); 42 U.S.C. 6611, 6612 (Office of Science and Technology Policy); 31 U.S.C. 501, 502 (Office of Management and Budget (OMB)).

For a brief overview of objections of the Nixon Administration to legislation subjecting the Director of OMB to Senate confirmation, see Onley, "Treading on Sacred Ground: Congress's Power to Subject White House Advisers to Senate Confirmation," pp. 1183-1184.

Recently, the Bush Administration has resisted congressional attempts to have Tom Ridge, the Director of the Office of Homeland Security, testify. See note 52, *supra*. The Office of Homeland Security was established within the Executive Office of the President pursuant to E.O. 13228 issued on Oct. 8, 2001. *Federal Register*, vol. 66, Oct. 10, 2001, pp. 51812-51817. Even before Congress requested Ridge's testimony, legislation had been introduced to create an office with homeland security functions. See, e.g., S. 1449, 107th Cong. (to establish within the White House a National Office for Combating Terrorism, with a director subject to Senate confirmation); S. 1534, 107th Cong. (to establish a "Department of National Homeland Security," with the Secretary subject to Senate confirmation). Upon the introduction of S. 1534, Senator Joseph Lieberman observed that the Secretary "will be accountable to the Congress and the American people." *Congressional Record*, daily edition, vol. 147, Oct. 10, 2001, p. S10646.

for legislative or oversight purposes, has a right to information held by the executive branch in the absence of either a valid claim of constitutional privilege by the executive or a statutory provision whereby Congress has limited its constitutional right to information. (3) A committee may request or demand the testimony of a presidential adviser. Legal mechanisms available for enforcing congressional subpoenas to the executive branch may fail to provide the committee with the desired information. (4) Negotiations may result in the production of at least some of the information sought.

THE WHITE HOUSE
OFFICE OF HOMELAND SECURITY

FACSIMILE TRANSMITTAL SHEET

TO: Brett Karanang FROM: Carl Buck 112
ORGANIZATION: SENDER'S FAX NUMBERFAX NUMBER: 6-1647 SENDER'S PHONE NUMBER: 6-2552

PHONE NUMBER: DATE AND TIME

RE: TOTAL NO. OF PAGES INCLUDING COVER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Brett -

I understand you are
drafting a response.

- Carl

WASHINGTON, DC

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

DANIEL K. INOUYE, HAWAII
 ERNEST F. HOLLINGS, SOUTH CAROLINA
 PATRICK J. LEAHY, VERMONT
 TOM HARKIN, IOWA
 BARBARA A. MIKULSKI, MARYLAND
 HARRY REID, NEVADA
 HERB KOHL, WISCONSIN
 PATTY MURRAY, WASHINGTON
 BYRON L. DORGAN, NORTH DAKOTA
 DIANNE FEINSTEIN, CALIFORNIA
 RICHARD J. DURBIN, ILLINOIS
 TIM JOHNSON, SOUTH DAKOTA
 MARY L. LANDRIEU, LOUISIANA
 JACK REED, RHODE ISLAND

TED STEVENS, ALASKA
 TRAD COCHRAN, MISSISSIPPI
 ALLEN SPECTER, PENNSYLVANIA
 PETE V. DOMENICI, NEW MEXICO
 CHRISTOPHER S. BOND, MISSOURI
 MITCH MCCONNELL, KENTUCKY
 CONRAD BURNS, MONTANA
 RICHARD C. SHELLEY, ALABAMA
 JUDY SHIELDS, NEW HAMPSHIRE
 ROBERT F. BLUMENTHAL, CONNECTICUT
 BEN NORTON, COLORADO
 LARRY CRAIG, IDAHO
 RAY BILLEY MUTHENSON, TEXAS
 MIKE CRANE, OHIO

TERRANCE E. BALVAIN, STAFF DIRECTOR
 STEVEN J. CORTESI, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-6025
www.senate.gov/appropriations

April 17, 2002

Honorable Tom Ridge
 Director
 Office of Homeland Security
 The White House
 Washington, DC 20500

Dear Director Ridge:

The purpose of this letter is to renew our earlier invitation to you to testify before the Senate Committee on Appropriations in the matter of the security of our homeland.

Last week, we held two days of hearings on the defense of the homeland. We heard from people on the frontline of our homeland defense about the need for more resources to hire, equip, and train emergency response personnel. Witnesses testified to the need for clear direction from the Federal government on such issues as accurate and detailed threat assessments, standards for interoperability of communications systems, standards for our state and local emergency health care systems, and guidance on how all levels of government and the private sector should work together to secure our nation from terrorist attack.

The hearing testimony revealed a plethora of basic problems, from incompatible broadcast and communications systems, to security clearances mired in bureaucratic red tape, to National Guard troops stretched thin and, in some cases, expected to guard areas without arms. Senators heard the frustrations of state and local officials who are receiving reports of little or no real direction from the Federal government in assessing risk and pinpointing vulnerabilities. We heard from experts on terrorism that our vulnerabilities can be easily exploited using little money and weapons fashioned from widely available sources. During these two days of hearings, the Committee was told of valiant efforts by good citizens, but also of little guidance about coordination, prevention of duplication and waste, or effective use of resource sharing from the Federal government.

The Honorable Tom Ridge
April 17, 2002
Page Two

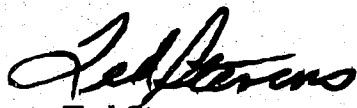
After listening to many hours of detailed testimony, it became even more evident that the Committee needs to hear directly from you, the individual who has been put in charge of homeland defense activities by the President, about the Administration's strategy for a comprehensive national domestic defense plan. Consequently, we continue to seek your testimony on this matter of vital national importance. Again, we assure you that we have no interest in taking testimony about your private advice to the President.

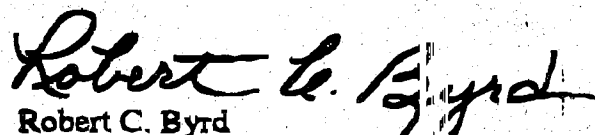
As has been pointed out in testimony, we must act, and act quickly, to address these new challenges. This will mean rising above the usual bureaucratic turf battles; figuring out how to address a problem which crosses the jurisdictions of numerous Departments and agencies; building a new flexibility into our solidified government structures; and thinking about federal, state and local relations in a new way.

The Committee will conduct additional hearings on the defense of the homeland on April 23, April 25, April 30, May 2, and May 9, 2002. We will invite Cabinet officers with various homeland defense responsibilities to testify in support of those components. However, this is no substitute for having the one official testify whom the President has designated as responsible for coordinating the Executive Branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks in our nation's homeland. You may elect any of the above five dates that you prefer for appearing before the Committee on Appropriations; if you will let the Committee know of your preference, we will be pleased to accommodate your wishes in this regard.

Thank you again for your courtesy and cooperation.

Sincerely yours,


Ted Stevens
Ranking Member


Robert C. Byrd
Chairman

RCB/TS:tes

THE WHITE HOUSE
WASHINGTON

April 30, 2002

Dear Chairman Byrd and Senator Stevens:

Thank you for your April 17 letter to Assistant to the President for Homeland Security Tom Ridge renewing your previous invitations for him to testify before the Committee.

We look forward to working with you and the committee as deliberations begin on the fiscal year "02" supplemental, and fiscal year "03" appropriations bills. As you are aware, the Secretaries of Transportation, Agriculture, State, Treasury, Interior, Defense, Health & Human Services as well as the Attorney General and the Director of the Federal Emergency Management Agency are scheduled to testify before the Senate Appropriations Committee on the President's funding requests for homeland security.

Regarding your request, Governor Ridge and his staff remain fully prepared to meet with you and to provide appropriate briefings to you, the Committee, and Committee staff. Consistent with the policy long maintained by the Executive Branch and long respected by the Congress, Presidential advisors such as Governor Ridge do not formally testify before Congress on policy matters.

Thank you again for your letter. We look forward to continuing to consult and work with you on homeland security issues.

Sincerely,



Nicholas E. Calio
Assistant to the President for Legislative Affairs

The Honorable Robert C. Byrd
The Honorable Ted Stevens
United States Senate
Washington, DC 20510



BRETT

OFFICE OF HOMELAND SECURITY

FACSIMILE TRANSMITTAL SHEET

TO:	FROM: Edward McNally
AGENCY/ORGANIZATION:	DATE: 4/17/02
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	SENDER'S PHONE NUMBER: (202) 456-1700
RE:	SENDER'S FAX NUMBER: (202) 456-1908

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Judge and I in (cc: Brett) —
The attached 4/17/02 letter from Senator Byrd and Stenerson is as per my e-mail earlier today. As you'll see on p. 2, they are attempting to ratchet up the pressure, and to try to distinguish between various categories of potential testimony.

(If all pages are not received, please call (202) 456-1195)

— EJ

The document accompanying this facsimile transmittal sheet is intended for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential, or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited.

ROBERT C. SYRD, WEST VIRGINIA, CHAIRMAN

DANIEL K. INOUE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
PATRICK J. LEAHY, VERMONT
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA
HERB KOHL, WISCONSIN
PATTY MURRAY, WASHINGTON
BYRON L. DORGAN, NORTH DAKOTA
DIANNE FEINSTEIN, CALIFORNIA
RICHARD J. DURBIN, ILLINOIS
TIM JOHNSON, SOUTH DAKOTA
MARY L. LANDRIEU, LOUISIANA
JACK REED, RHODE ISLAND

TED STEVENS, ALASKA
THAD COCHRAN, MISSISSIPPI
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHRISTOPHER S. BOND, MISSOURI
MITCH MCCONNELL, KENTUCKY
CONRAD BURNS, MONTANA
RICHARD C. SHULTZ, ALABAMA
JUDG GREGG, NEW HAMPSHIRE
ROBERT F. BENNETT, UTAH
BEN NIGHTHORSE CAMPBELL, COLORADO
LARRY CRAIG, IDAHO
RAY BAILEY HUTCHESON, TEXAS
MIKE DEWINE, OHIO

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

www.senate.gov/appropriations

TERRENCE E. BALVAIN, STAFF DIRECTOR
STEVEN J. CORTESE, MINORITY STAFF DIRECTOR

April 17, 2002

Honorable Tom Ridge
Director
Office of Homeland Security
The White House
Washington, DC 20500

Dear Director Ridge:

The purpose of this letter is to renew our earlier invitation to you to testify before the Senate Committee on Appropriations in the matter of the security of our homeland.

Last week, we held two days of hearings on the defense of the homeland. We heard from people on the frontline of our homeland defense about the need for more resources to hire, equip, and train emergency response personnel. Witnesses testified to the need for clear direction from the Federal government on such issues as accurate and detailed threat assessments, standards for interoperability of communications systems, standards for our state and local emergency health care systems, and guidance on how all levels of government and the private sector should work together to secure our nation from terrorist attack.

The hearing testimony revealed a plethora of basic problems, from incompatible broadcast and communications systems, to security clearances mired in bureaucratic red tape, to National Guard troops stretched thin and, in some cases, expected to guard areas without arms. Senators heard the frustrations of state and local officials who are receiving reports of little or no real direction from the Federal government in assessing risk and pinpointing vulnerabilities. We heard from experts on terrorism that our vulnerabilities can be easily exploited using little money and weapons fashioned from widely available sources. During those two days of hearings, the Committee was told of valiant efforts by good citizens, but also of little guidance about coordination, prevention of duplication and waste, or effective use of resource sharing from the Federal government.

The Honorable Tom Ridge
April 17, 2002
Page Two

After listening to many hours of detailed testimony, it became even more evident that the Committee needs to hear directly from you, the individual who has been put in charge of homeland defense activities by the President, about the Administration's strategy for a comprehensive national domestic defense plan. Consequently, we continue to seek your testimony on this matter of vital national importance. Again, we assure you that we have no interest in taking testimony about your private advice to the President.

As has been pointed out in testimony, we must act, and act quickly, to address these new challenges. This will mean rising above the usual bureaucratic turf battles; figuring out how to address a problem which crosses the jurisdictions of numerous Departments and agencies; building a new flexibility into our solidified government structures; and thinking about federal, state and local relations in a new way.

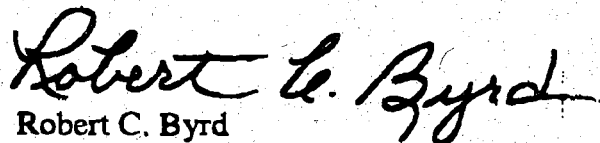
The Committee will conduct additional hearings on the defense of the homeland on April 23, April 25, April 30, May 2, and May 9, 2002. We will invite Cabinet officers with various homeland defense responsibilities to testify in support of those components. However, this is no substitute for having the one official testify whom the President has designated as responsible for coordinating the Executive Branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks in our nation's homeland. You may elect any of the above five dates that you prefer for appearing before the Committee on Appropriations; if you will let the Committee know of your preference, we will be pleased to accommodate your wishes in this regard.

Thank you again for your courtesy and cooperation.

Sincerely yours,



Ted Stevens
Ranking Member



Robert C. Byrd
Chairman

RCB/TS:tes

Brett

THE WHITE HOUSE

WASHINGTON

March 21, 2002

Dear Senator Byrd and Senator Stevens:

The President received your letter of March 15, 2002, and asked that I reply on his behalf.

The Administration respects the important role played by the Congress in evaluating and funding homeland security efforts, and we are committed to meeting Congress' legitimate need for information. For that reason, senior Administration officials, including members of the President's Cabinet and the Director of the Office of Management and Budget, have testified before Congress on these subjects. Governor Ridge and his staff have also provided numerous briefings to many members of Congress and their staffs on homeland security and budgetary matters. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. In that vein, we would once again offer to have Governor Ridge meet with you and your Committee. We have also indicated to Majority Leader Daschle that Governor Ridge would like to provide all Senators a briefing. Just as significantly, each of the departments and agencies with operational and budget authority also will continue to work with and testify before the Congress.

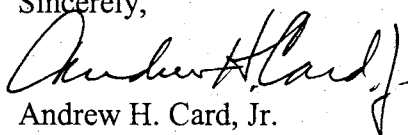
As Nick Calio advised you in his letter of March 13, 2002, however, this Administration also will adhere to the same policy that Presidents of both parties have long followed and that Congress has long respected: The President's immediate White House advisers and staff, including officials with responsibilities closely analogous to those of Governor Ridge such as the National Security Advisor, ordinarily do not testify before Congress on policy matters. This is a fundamental principle of separation of powers that protects the confidentiality of the President's relationship with his White House advisers and the President's ability to employ advisers who can devote their attention to assisting and advising the President as he sees fit.

The rare historical exceptions to the rule against testimony by White House staff have generally been in circumstances, unlike those here, involving substantial evidence of personal or official misconduct. For example, your letter cites three World War II examples, but each of those situations involved allegations of personal or official wrongdoing. And even if there were isolated examples of close Presidential advisers testifying on policy matters, that would not alter our fundamental point: For many decades, Presidents of both parties -- and Congress -- have agreed that the President's White House advisers ordinarily do not testify before Congress on policy matters.

I appreciate your continued interest in homeland security issues, and I invite you to meet with me, Governor Ridge, Nick Calio, and Judge Gonzales to work out a satisfactory

accommodation that will ensure, consistent with these principles, that you receive the information you need regarding homeland security matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew H. Card, Jr.", with a stylized flourish at the end.

Andrew H. Card, Jr.
Chief of Staff

The Honorable Robert C. Byrd
The Honorable Ted Stevens
United States Senate
Washington, DC 20510

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2964	
CONNECTION TEL		92248553
CONNECTION ID		
ST. TIME	03/21 10:47	
USAGE T	00'55	
PGS. SENT	3	
RESULT	OK	

THE WHITE HOUSE

WASHINGTON

FACSIMILE COVER SHEET

DATE: March 21, 2002

TO: The Honorable Robert C. Byrd 224-8553
The Honorable Ted Stevens 228-0248

FROM: Andrew H. Card, Chief of Staff

Number of Pages (including cover sheet): 3

Message:

Confidentiality Notice

The document accompanying this telecopy transmission contains confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2965	
CONNECTION TEL		92280248
CONNECTION ID		
ST. TIME	03/21 10:48	
USAGE T	00'55	
PGS. SENT	3	
RESULT	OK	

THE WHITE HOUSE

WASHINGTON

FACSIMILE COVER SHEET

DATE: March 21, 2002

TO: The Honorable Robert C. Byrd 224-8553
The Honorable Ted Stevens 228-0248

FROM: Andrew H. Card, Chief of Staff

Number of Pages (including cover sheet): 3

Message:

Confidentiality Notice

The document accompanying this telecopy transmission contains confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

JAMES M. JEFFORDS, VERMONT, CHAIRMAN

MAX BAUCUS, MONTANA
 HARRY REID, NEVADA
 BOB GRAMM, FLORIDA
 JOSEPH I. LIEBERMAN, CONNECTICUT
 BARBARA BOXER, CALIFORNIA
 RON WYDEN, OREGON
 THOMAS R. CARPER, DELAWARE
 HILLARY RODHAM CLINTON, NEW YORK
 JON S. CORZINE, NEW JERSEY

BOB SMITH, NEW HAMPSHIRE
 JOHN W. WARNER, VIRGINIA
 JAMES M. INHOFE, OKLAHOMA
 CHRISTOPHER S. BOND, MISSOURI
 GEORGE V. VOINOVICH, OHIO
 MICHAEL D. CRAPO, IDAHO
 LINCOLN CHAFFE, RHODE ISLAND
 ARIEN SPECTER, PENNSYLVANIA
 BEN NIGHTINGALE CAMPBELL, COLORADO

KEN CONNOLLY, MAJORITY STAFF DIRECTOR
 DAVE CONOVER, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
 WASHINGTON, DC 20510-6175

April 15, 2002

The Honorable Tom Ridge, Director
 The White House
 Attention: Office of Homeland Security
 1600 Pennsylvania Avenue
 Washington, D.C. 20502

Dear Director Ridge:

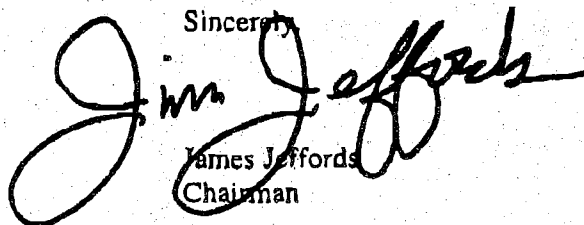
On behalf of the Senate Committee on Environment and Public Works, we would like to invite you to testify before the full Committee on Tuesday, May 7, 2002. Beginning at 9:30 a.m. in Room 406 of the Dirksen Senate Office Building, the Committee will conduct a legislative hearing on the proposed First Responder Initiative.

The tragic events of September 11th, and almost daily reports of the threat of domestic terrorism, have caused Americans to focus like never before on the issues of domestic terrorism preparedness and response. This Committee recognizes the importance of a well-informed, well-prepared citizenry. This Committee also recognizes that as Director of the Office of Homeland Security, you will play a vital role in charting a national policy course for preparing first responders to respond to acts of terrorism and weapons of mass destruction. As such, I believe that the American public and its elected representatives deserve a full and open discussion of your views on these issues, your plans to spend public funds on these efforts, and your findings as to the current level of preparedness of our nation's first responders.

At a hearing on March 12, 2002, this Committee began a national dialogue with the emergency preparedness community on the proposed \$3.5 billion First Responder Initiative within the Federal Emergency Management Agency. At that hearing, FEMA Director Joe Allbaugh and state and local first responders testified on the initiative and members of this Committee engaged an important and productive discussion on a variety of issues related to terrorism preparedness and response. I intend to continue this dialogue in a public forum with all the stakeholders in this process—from first responders to legislators to members of the executive branch—in an effort to draft authorizing legislation that will effectively prepare this nation to respond to acts of terrorism. And as the President's point person on these issues, this process must involve you.

I look forward to your participation in a Committee hearing on these important issues.

Sincerely,



James M. Jeffords
 Chairman

DANIEL K. INOUE, HAWAII
BRUNY E. HOLLINGS, SOUTH CAROLINA
PATRICK J. LEAHY, VERMONT
TOM HARTMAN, IOWA
DAVID A. BUEHLER, MARYLAND
MARTY REID, NEVADA
KEVIN CROWLEY, WISCONSIN
PATTY MURRAY, WASHINGTON
STROM L. THOMAS, NORTH DAKOTA
DIANNE FEINSTEIN, CALIFORNIA
RICHARD J. DURBIN, ILLINOIS
TIM JOHNSON, SOUTH DAKOTA
MARY L. LANDRIEU, LOUISIANA
JACK REED, RHODE ISLAND

TED STEVENS, ALASKA
THOMAS RICHARDSON, MISSISSIPPI
JULIA SPECTOR, PENNSYLVANIA
BETTY M. DEMME, NEW MEXICO
CHRISTOPHER E. BROWN, MISSOURI
MUTCH MCCONNELL, KENTUCKY
CONRAD BURRIS, MONTANA
RICHARD C. SCHULTZ, ALABAMA
JUDS BEEBE, NEW HAMPSHIRE
ROBERT F. BENNETT, UTAH
DEN NIGHTHOUSE CAMPBELL, COLORADO
LARRY CRAIG, IDAHO
KEV SALLY HUTCHISON, TEXAS
MIKE DEWINE, OHIO

TERENCE E. SAUVAGE, STAFF DIRECTOR
STEVEN J. CORTESE, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-5026

www.senate.gov/appropriations

April 9, 2002

Governor Tom Ridge
Director, Office of Homeland Security
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

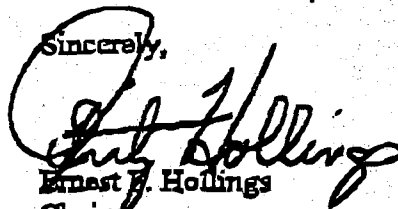
Dear Governor Ridge:

As Chairman of the Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary, I am requesting your appearance at a hearing on homeland security. The purpose of the hearing is to review proposals of the Office of Homeland Security for the FY 2003 budget for the agencies and programs funded under the CJS Appropriations bill.

As you know, this Subcommittee is responsible for funding a number of agencies directly involved in homeland security, including the Office of Domestic Preparedness, the Federal Bureau of Investigations, and the Immigration and Naturalization Service. We understand that the Office of Homeland Security is interested in drastically altering some of these accounts, such as shifting the Office of Domestic Preparedness from the Department of Justice to the Federal Emergency Management Administration and merging the Border Patrol and other law enforcement functions of the Immigration and Naturalization Service with the U.S. Customs Service. Your testimony before this Subcommittee regarding such changes is essential as the appropriations process begins to move forward.

Should you or your staff have any questions or concerns about the hearing, please feel free to contact Jill Shapiro Long at 202-224-9073.

Sincerely,



Ernest F. Hollings
Chairman

Senate Appropriations Subcommittee on
Commerce, Justice, State, and the Judiciary

APR 10 2002

TOTAL P.02

THE WHITE HOUSE
OFFICE OF HOMELAND SECURITY

FACSIMILE TRANSMITTAL SHEET

TO:

Brett Kavanaugh

FROM:

Carl Smith

ORGANIZATION:

SENDER'S FAX NUMBER

FAX NUMBER:

65104

SENDER'S PHONE NUMBER

6-2552

PHONE NUMBER:

DATE AND TIME

RE:

TOTAL NO. OF PAGES INCLUDING COVER:

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY☐ PLEASE RECYCLE

NOTES/COMMENTS:

WASHINGTON, DC

APR-11-2002 11:19

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

DANIEL K. INOUE, HAWAII
 ERNEST F. HOLLINGS, SOUTH CAROLINA
 PATRICK J. LEAHY, VERMONT
 TOM HARKIN, IOWA
 BARBARA A. MIKULSKI, MARYLAND
 HARRY REID, NEVADA
 KEES KOHL, WISCONSIN
 PATTY MURRAY, WASHINGTON
 BYRON L. DORGAN, NORTH DAKOTA
 BLANNE FEINSTEIN, CALIFORNIA
 RICHARD J. DURBIN, ILLINOIS
 TIM JOHNSON, SOUTH DAKOTA
 MARY L. LANDRIEU, LOUISIANA
 JACK REED, RHODE ISLAND

TED STEVENS, ALASKA
 THAD COCHRAN, MISSISSIPPI
 ARLEN SPECTER, PENNSYLVANIA
 MITT ROMNEY, NEW HAMPSHIRE
 CHRISTOPHER S. BOND, MISSOURI
 MITCH MCCONNELL, KENTUCKY
 CONRAD BURNS, MONTANA
 RICHARD C. SCHIFF, CALIFORNIA
 JUDY SHELLEY, NEW HAMPSHIRE
 ROBERT F. BENNETT, UTAH
 DEN NIGHTHORSE CAMPBELL, COLORADO
 LARRY CRAIG, IDAHO
 KAY BAILEY HUTCHISON, TEXAS
 MIKE DEWINE, OHIO

TERRANCE E. SALVAIN, STAFF DIRECTOR
 STEVEN J. CORTESE, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6026

www.senate.gov/appropriations

April 9, 2002

Governor Tom Ridge
 Director, Office of Homeland Security
 The White House
 1600 Pennsylvania Avenue, N.W.
 Washington, DC 20500

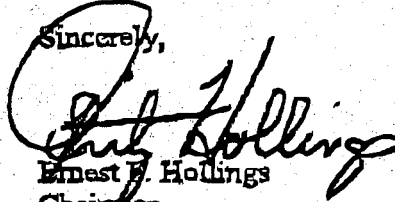
Dear Governor Ridge:

As Chairman of the Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary, I am requesting your appearance at a hearing on homeland security. The purpose of the hearing is to review proposals of the Office of Homeland Security for the FY 2003 budget for the agencies and programs funded under the CJS Appropriations bill.

As you know, this Subcommittee is responsible for funding a number of agencies directly involved in homeland security, including the Office of Domestic Preparedness, the Federal Bureau of Investigation, and the Immigration and Naturalization Service. We understand that the Office of Homeland Security is interested in drastically altering some of these accounts, such as shifting the Office of Domestic Preparedness from the Department of Justice to the Federal Emergency Management Administration and merging the Border Patrol and other law enforcement functions of the Immigration and Naturalization Service with the U.S. Customs Service. Your testimony before this Subcommittee regarding such changes is essential as the appropriations process begins to move forward.

Should you or your staff have any questions or concerns about the hearing, please feel free to contact Jill Shapiro Long at 202-224-9073.

Sincerely,



Ernest F. Hollings
 Chairman

Senate Appropriations Subcommittee on
 Commerce, Justice, State, and the Judiciary

APR 10 2002

TOTAL P.02

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Fax Cover Sheet	Office of Homeland Security - To: Brett Kavanaugh - From: Edward McNally	1	04/11/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

FRC ID:

9696

FOIA IDs and Segments:

2014-0216-F 1

OA Num.:

2166

NARA Num.:

2077

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

THE WHITE HOUSE

WASHINGTON

April 9, 2002

Dear Chairman Lieberman:

Thank you for your April 2 letter to Assistant to the President for Homeland Security Tom Ridge. The President and the Administration respect the important role played by the Congress with regard to homeland security, and appreciate your interest in and work on this vital issue.

The Administration is committed to meeting Congress' legitimate needs for information with respect to homeland security. For that reason, senior Administration officials, including members of the President's Cabinet and the Director of the Office of Management and Budget, have testified before Congress on homeland security matters on numerous occasions since Governor Ridge became the President's advisor on October 8, 2001. These departments and agencies with operational and budget authority will continue to work with and testify before the Congress.

In addition, Governor Ridge has personally participated in over thirty-five meetings on Capitol Hill. Collectively, he and his staff have been involved in over one hundred meetings with members of Congress and their staffs on homeland security and budgetary matters. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this practice. In fact, during the next two weeks, he will be participating in a number of Congressional meetings, including one with the House Government Reform Committee and another with the Chairmen and Ranking Members of the House Appropriations Committee and its subcommittees.

Your letter asks for an Administration official to testify on "how to organize the federal government to promote homeland security" and proposed legislation. The Administration would be pleased to assist the Committee's consideration, and Mitchell E. Daniels, Director of the Office of Management and Budget, is available to testify on Thursday.

Your letter specifically asks, in addition, for Governor Ridge to testify. Governor Ridge and his staff have already offered -- and remain available -- to brief you and the Committee this week, or as otherwise appropriate on homeland security issues, including this organizational issue, in a public setting.

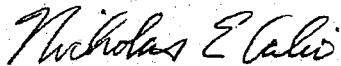
As to formal testimony, however, as Chief of Staff Card and I have informed Senators Byrd and Stevens, this Administration will adhere to the same policy that Presidents of both parties have long followed and that Congress has long respected: The President's immediate White House advisers and staff, such as Governor Ridge, ordinarily do not testify before Congress on policy matters. This principle has long applied to Presidential advisors such as the Chief of Staff, the Counsel, the National Security Advisor, and other immediate advisors of the President such as Governor Ridge. This principle of separation of powers protects the confidentiality of the President's relationship with his White House advisors and the President's ability to employ

Chairman Lieberman
April 9, 2002
Page 2

advisors who can devote their attention to assisting and advising the President as the President sees fit.

Finally, the Office of Homeland Security is transmitting, under separate cover, answers to the extensive questions previously sent to Governor Ridge by you. The answers to those multi-part questions are directly related to issues to be raised at the hearing. Please do not hesitate to contact me with any questions.

Sincerely,



Nicholas E. Calio
Assistant to the President for Legislative Affairs

The Honorable Joseph I. Lieberman
Chairman
Committee on Governmental Affairs
United States Senate
Washington DC 20510-6250

JOSEPH L. LIEBERMAN, CONNECTICUT, CHAIRMAN

EARL LUTIN, MICHIGAN
DANIEL M. AKER, HAWAII
RICHARD J. DURBIN, ILLINOIS
ROBERT C. TORRISI, NEW JERSEY
MAX CLELAND, GEORGIA
THOMAS R. CARPER, DELAWARE
JEAN CARMAN, MISSOURI
MARK DAYTON, MINNESOTA

MED THOMPSON, TENNESSEE
TED STEVENS, ALASKA
SUSAN M. COLLINS, MAINE
GEORGE V. VOINOVICH, OHIO
PETE V. DOMENICI, NEW MEXICO
THAD COCHRAN, MISSISSIPPI
ROBERT F. BENNETT, UTAH
JIM BUNNING, KENTUCKY

JOYCE A. RECHTSCHAFFEN, STAFF DIRECTOR AND COUNSEL
HANNAH E. SISTER, MINORITY STAFF DIRECTOR AND COUNSEL

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

April 2, 2002

The Honorable Tom Ridge
Assistant to the President for Homeland Security
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20500

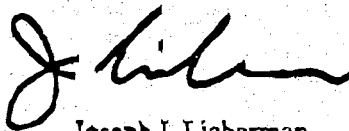
Dear Governor Ridge:

The Senate Committee on Governmental Affairs will hold a hearing to discuss legislation to establish a Department of National Homeland Security on April 11 at 9:30 a.m. in room 342 Dirksen. The Committee requests that you testify on this critical issue of how to organize the federal government to promote homeland security. As Director of the Office of Homeland Security, you have a unique vantage point on the weaknesses in the current federal efforts and the need for change. The Committee seeks your views on the proposed legislation as well as on your own proposals to reorganize to meet threats to this country on our own soil.

The proposed legislation would create a Department of National Homeland Security, to be led by a cabinet Secretary who will be appointed by the President and confirmed by the Senate. Under the original bill (S. 1534), the Department would include the U.S. Customs Service, the U.S. Coast Guard, the Border Patrol of the Immigration and Naturalization Service, the Federal Emergency Management Agency, and several other programs addressing critical infrastructure protection and domestic preparedness. The Secretary would be a member of the National Security Council, and have direct control over those agencies which are central to our capacity to protect our borders and critical infrastructure, while preparing for, and if necessary responding to, another terrorist attack. A new draft of the bill also incorporates several key concepts from Senator Graham's proposed legislation, S. 1449. Specifically, the new draft would create a statutory office in the White House to focus on terrorism, run by a Senate confirmed-director. A copy of this revised draft will be available for your consideration next week.

Given your role in homeland security, especially the knowledge and experience you have gained since the President appointed you on October 8, 2001, it is critical for the Committee to hear your perspectives as we consider legislation designed to vastly improve our government's ability to protect our homeland. I look forward to hearing from you as soon as possible, and to working with you on this vitally important matter.

Sincerely,



Joseph L. Lieberman
Chairman

JLL:ma



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF HOMELAND SECURITY
WASHINGTON, D. C. 20502

March 20, 2002

MEMORANDUM FOR JUDGE ALBERTO GONZALEZ
TIM FLANIGAN

CC: GOV. TOM RIDGE, ADM. STEVE ABBOT, MARK
HOLMAN, BRETT KAVANUGH, RACHEL BRAND,
DAVID ADDINGTON

FROM: EDWARD McNALLY *EMW*

SUBJECT: TODAY'S LETTER FROM SEN. LIEBERMAN
REQUESTING APRIL 1ST RESPONSE TO QUESTIONS

As we discussed this morning, attached for your information and consideration is a copy of the letter that was transmitted yesterday from Sen. Joseph Lieberman as Chairman of the Governmental Affairs Committee, which as you know has already been the subject of public reports.

The letter poses a total of sixteen enumerated questions, divided into three sections identified as "Organization for Homeland Security", "Critical Infrastructure Protection" and "Security of Government Information Systems". As with the written questions transmitted Monday by the GAO (copy attached), also apparently at the instigation of Sen. Lieberman in his capacity as Committee Chairman, the questions in the attached letter are dense, multi-part queries which would consume significant amounts of the acutely limited OHS policy personnel resources, especially during a time when OHS remains something of a start up, when all resources need to be devoted to supporting the President's mission and his direction for a comprehensive National Strategy Report by July, and when our nation is at war. Just as important, and also like many of the questions transmitted by Sen. Lieberman Monday via the GAO, many of the questions go directly to the separation of powers issues we have discussed recently, and the confidential policy advice that Governor Ridge and others have provided and are providing to the President.

The Senator requests that the White House respond by April 1, 2002.

Attachments

JOSEPH I. LIEBERMAN, CONNECTICUT, CHAIRMAN

CARL LEVIN, MICHIGAN
 DANIEL K. AKAKA, HAWAII
 RICHARD J. DURBIN, ILLINOIS
 ROBERT G. TORRICELLI, NEW JERSEY
 MAX CLELAND, GEORGIA
 THOMAS R. CARPER, DELAWARE
 JEAN CARMANAN, MISSOURI
 MARK DAYTON, MINNESOTA

FRED THOMPSON, TENNESSEE
 TED STEVENS, ALASKA
 SUSAN M. COLLINS, MAINE
 GEORGE V. VOINOVICH, OHIO
 PETE V. DOMENICI, NEW MEXICO
 THAD COCHRAN, MISSISSIPPI
 ROBERT F. BENNETT, UTAH
 JIM BUNNING, KENTUCKY

JOYCE A. RECHTSCHAFFEN, STAFF DIRECTOR AND COUNSEL
 RICHARD A. HERTLING, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

March 19, 2002

The Honorable Tom Ridge
 Homeland Security Advisor
 The White House
 1600 Pennsylvania Avenue
 Washington, DC 20502

Dear Governor Ridge:

Over the past five months, the Senate Committee on Governmental Affairs has conducted a series of twelve hearings on homeland security – including the government's response to bioterrorism; aviation, port and rail security; the local role in homeland security; and the protection of our nation's critical infrastructure. Throughout these hearings, several important themes have emerged. Specifically, we heard about the need for:

- improved communication among the agencies and between the public and private sectors;
- better coordination of response efforts among all responsible entities;
- the resolution of conflicts between competing agency priorities (for example, the competing needs of criminal investigations vs. protection of public health); and
- a comprehensive national strategy that identifies the homeland security responsibilities of all relevant public entities.

I am following up with you to determine what is being done to address these issues. Please provide me with responses to the following questions by April 1, 2002. Over the coming weeks, of course, we will be following up with you on the status of other key homeland security issue areas.

Organization for Homeland Security

I believe strongly that a Department of Homeland Security is necessary to effectively secure our borders, prepare for and respond to a terrorist attack, and protect our critical infrastructure. A Department of Homeland Security would enable us to bring under one Cabinet Secretary's authority critical functions that are now spread across the bureaucracy. Thus far, the Administration has not embraced this approach. Even so, I am encouraged by public reports that you recognize the need for a border management agency. I would appreciate additional information about your work on the border management agency, as well as your efforts to improve operations of key border agencies and the Federal Emergency Management Agency (FEMA) within the existing organizational structure.

1. With respect to your recently publicized efforts to create a border management agency, please describe:
 - the primary shortcomings in the present organizational structure our nation uses to secure its borders, and
 - the vulnerabilities our country is exposed to by the absence of the kind of border management agency which you have proposed.
2. Please describe the Office of Homeland Security's (OHS) efforts to improve cooperation and day-to-day coordination between the Border Patrol, the U.S. Customs Service, the Immigration and Naturalization Service, the U.S. Coast Guard, and other federal agencies involved in securing our border from dangerous cargo, conveyances, and people. What are the most critical operational issues that you believe should be addressed by these agencies?
3. Please describe how OHS perceives the role of FEMA in implementing OHS's agenda. Is the role of FEMA being enhanced? If so, how? Please also describe any actual or potential conflicts or areas that require greater coordination between FEMA and other agencies involved in the federal response to terrorism and OHS's efforts to improve coordination.
4. The Administration's Budget states that it seeks to nearly double spending for homeland security needs in FY 2003 to \$37.7 billion. To what extent does this figure represent wholly new spending, as opposed to continuing costs that were not previously classified as "homeland security" expenses? How was it determined which programs would be designated as "homeland security" for purposes of this Budget? Moreover, additional resources will not be enough if a comprehensive plan is not in place to ensure that these funds are spent wisely and with accountability. Please state when the Administration's strategy to combat homeland security threats will be completed and submitted to the Congress. How will it coordinate responses both within the federal government and between the federal government and state and local authorities? Who will be in charge of response efforts under this plan and what authority will be used to direct the actions of others?
5. The Executive Order establishing your duties as Assistant to the President for Homeland Security states that you are to play an integral role in the homeland security budget process, by advising OMB on the funding levels for homeland security programs and, before OMB forwards a proposed annual budget submission to the President, certifying that the funding levels are adequate. News reports on March 5, 2002 indicate, however, that you recently declined a bipartisan invitation to testify on the homeland security budget, on the ground that you are an adviser to the President and are not serving in a Senate-confirmed position. Your decision not to testify hampers Congress's ability to explore thoroughly the Administration's plan to combat terrorism and increase national preparedness from a comprehensive perspective. How do you propose that Congress exercise its responsibility to oversee this critical process, and your key decision-making role, without your guidance and insight? How does the Administration plan to ensure

1. As we examine how best to protect this nation's critical infrastructure, it has become clear that we must define what constitutes our critical infrastructures. Additionally, there must be a government-wide effort to identify each agency's key infrastructures. What steps have been taken since last October to identify the nation's key critical infrastructures? What are the nation's key critical infrastructures?
2. At the Committee's September 12, 2001 hearing, Roberta Gross, NASA Inspector General, testified on the Presidential Decision Directive 63 (PDD 63) report prepared by the President's Council on Integrity and Efficiency. One of the primary findings of this review was that many agency infrastructure plans were incomplete. What has been done to ensure that all federal agencies develop plans to protect their key critical infrastructures? Which entity in the federal government is responsible for coordinating the completion of these plans? Are these plans all now complete? If not, which agencies have not submitted complete plans and when will they be complete?
3. The Committee's first two hearings on the protection of critical infrastructure occurred before President Bush signed Executive Order 13228, establishing the Office of Homeland Security and the Homeland Security Council, and Executive Order 13230, addressing the protection of critical infrastructure. Consequently, the testimony at these hearings reflected some uncertainty regarding the imminent changes in how the government would be organized to protect critical infrastructure. However, Administration officials recently announced the imminent opening of a cyber security information coordination center to coordinate the government's response to cyber attacks. According to published reports, this center is intended to unite elements of Cyberspace Security Advisor Dick Clarke's office, portions of the Critical Infrastructure Assurance Office, and the analysis and warning section of the National Infrastructure Protection Center. Precisely how are cyber security responsibilities allocated now under this new structure? Does the Administration have plans for further reallocation and refinement of these responsibilities?
4. Because the private sector owns approximately 85% of the critical infrastructure assets in the United States, it is an extremely important partner in the protection of both publicly and privately owned infrastructure. PDD 63, which was issued in May of 1998, called for the establishment of a public-private partnership involving a number of complex relationships. Federal agencies were designated to work with particular infrastructure sectors in the development of sectoral plans, which would then be integrated into a National Infrastructure Assurance Plan. The National Infrastructure Protection Center (NIPC) was established in the FBI to be the point of contact for the private sector for sharing information about threats, vulnerabilities, incidents, and response. Infrastructure sectors were to establish Information Sharing and Analysis Centers (ISACs) to gather, analyze, appropriately sanitize, and disseminate private sector information to both industry and the NIPC. At our Committee's hearing on October 4, 2002, witnesses reported that the record in establishing these information-sharing relationships was mixed. Have the strategies for information sharing changed over the intervening half year? If so, how, and what has been changed regarding these relationships? What progress

has been made in developing partnerships between the federal government and the private sector?

Security of Government Information Systems

1. What will be the role of Homeland Security Advisor in furthering the security of federal information security systems? What will be the role of the Cyberspace Security Advisor? How will these two advisers relate and coordinate?
2. In early October of 2001, the Administration published a notice requesting information from industry about the feasibility of building a secure, private network for critical government services ("GovNet"). In a recent report, Howard Schmidt, vice chairman of the Critical Infrastructure Protection Board, announced that the Administration does not know whether it will go forward with GovNet. The Administration's budget proposal would set aside \$5 million to study the feasibility of the GovNet concept through FY2003. Please describe the Administration's plans and timing for completing this evaluation and the criteria that will be used. What alternatives to GovNet are under consideration?
3. In its third annual report to the President and Congress, issued in December 2001, the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (known as the Gilmore Commission) recommended that the OHS develop and implement a comprehensive plan for research, development, testing, and evaluation to enhance cybersecurity. Please describe in detail what the Administration is doing to obtain the necessary research and development in the area of information systems protection, including the nature of the research and development and funding being committed and the mechanisms in place to transition that technology.
4. OMB's recent report of agencies' security assessments revealed that many agencies have significant deficiencies. OMB's report does not address the adequacy of agencies' corrective action plans, and OMB does not authorize agencies to release this material to Congress or GAO. How is the Administration assuring that adequate corrective action plans are developed and implemented?

I look forward to your responses on these issues. Please feel free to contact Susan Propper of my staff at (202) 224-6599 if you have any questions.

Sincerely,


Joseph I. Lieberman
Chairman

United States General Accounting Office
Washington, DC 20548

March 18, 2002

Edward E. McNally
General Counsel
Office of Homeland Security
The White House
Washington, D.C. 20502

Re: Establishing a Mutually Beneficial Working Relationship Between OHS and GAO

Dear Mr. McNally:

Thank you for arranging our meeting of March 12, 2002, between representatives of the Office of Homeland Security (OHS), the United States General Accounting Office (GAO), and counsel for the White House and Department of Justice. We appreciated the opportunity to offer the experience, expertise and capabilities of GAO on this issue of critical national importance. We hope that we conveyed our commitment to establish a mutually beneficial working relationship, which will facilitate sharing of information and other resources that will assist in the development of a comprehensive strategy for homeland security, while simultaneously allowing both OHS and GAO to do our jobs for our respective clients. While in one sense we report to different "clients", that is, the Congress and the President, in a more important sense we all work for the American people.

GAO is aware of, and sensitive to, the important workload of the Office of Homeland Security, and your limited available resources. As a result, we renew our commitment to consolidate our inquiries, minimize any time demands upon your office and staff, and to the greatest extent possible ask only those questions whose answers can only or best be provided by OHS. As we discussed, we do plan to obtain as much information as possible directly from the federal agencies, departments and OMB. We trust that our abilities to work cooperatively with these entities will continue to be as productive as they have been in the past, and ask your assistance in this regard. There remains, however, certain critical information that is appropriately best obtained, and in some cases, likely may only be obtained from OHS.

As we discussed, given the roles and responsibilities assigned to OHS under Executive Order 13228, dated October 8, 2001, GAO must obtain information from OHS to respond to the numerous bipartisan requests from Congress, including a significant number of requests from Committee chairs and ranking Members. These requests are directly linked to the responsibilities assigned to OHS under this Executive Order, and includes information related to:

- (1) The development and coordination of a comprehensive national strategy to secure the United States from terrorist threats or attacks;
- (2) The coordination of homeland security efforts among federal agencies, state local governments, and private entities;
- (1) The identification of programs that contribute to the Administration's strategy for homeland security; and
- (2) The process for certification by OHS of the necessary and appropriate funding levels for homeland security-related activities of the Executive Branch and the development of the President's annual budget submission.

We must also obtain from OHS information regarding your efforts to set priorities, determine objectives, and improve accountability for the resources being allocated to these efforts. We acknowledge your cautionary note contained in the document, "Securing the Homeland, Strengthening the Nation", submitted with the President's Budget in February 2002, where you indicate: "...this year's Budget does not attempt to address the totality of the homeland security agenda, a task that will be more fully developed with the publication of the National Strategy for Homeland Security and the Budget for 2004." Certainly you will agree that GAO must assist our congressional clients in understanding how the \$40 billion in additional homeland security funding approved with emergency supplemental legislation in 2001, and the President's FY03 proposed homeland security budget of approximately \$38 billion, will contribute to implementation of the national strategy, and achieve the results and outcomes desired under the homeland security agenda.

The comprehensive listing of current GAO engagements on behalf of Congress, and the greater than 150 GAO reports issued since 1991 on homeland security related topics, which we provided to you during our meeting, illustrates not only the broad nature of congressional interest, but also the nature and scope of our obligations to respond to these requests from Congress, as well as the breadth and depth of GAO experience and expertise that may be of value to Governor Ridge and OHS.

As a first step, we have consolidated various information requests from all GAO teams into the attached categories and several illustrative questions (see attached). I am sure that you understand and appreciate that this set of questions is not and may not be construed as the one and only request for information by GAO to OHS, particularly in light of the continuing interest of Congress in the development of a national strategy for homeland security, the ongoing and evolving efforts of OHS itself, and the fluid nature of the terrorist threat environment. However, these questions reflect our good faith efforts to consolidate our numerous current engagements into a

manageable level of inquiry. We remain flexible as to the most effective and least burdensome method of obtaining this information. I remain convinced that a series of constructive and focused meetings between the subject matter experts would be quickest and most productive, and would like to establish this schedule as soon as possible with you. Obviously, we will need to be able to have access to appropriate supporting documentation relating to OHS' responses to our questions.

I also would like to take this opportunity to renew our commitment to mutually share information, draft products, and other resources, including GAO's relationships with state and local governments, and the private and international sectors, in ways that you suggest would be of benefit to OHS. I will be pleased to facilitate the exchange of information with your office on behalf of GAO. We agree wholeheartedly with the OHS statement in "Securing the Homeland, Strengthening the Nation": "By working together we will make our homeland more secure."

I remain hopeful that we will find a way to establish a mutually productive working relationship on this topic of overriding national importance in a timely manner. But if you believe such a relationship is not possible at this time, I would appreciate the courtesy of a prompt reply. We simply need to know one way or another where we are headed. We have a number of Senate and House clients on both sides of the aisle who are inquiring as to the status of our homeland security related information requests, particularly those made to OHS. They have also inquired as to whether we are having any difficulty in obtaining access to information we need from OHS. We cannot delay responding to them much longer.

Thank you again for your prompt attention to this matter. GAO is available to meet at any time to discuss responses to our questions. Please feel free to contact me at any time [202-512-6787; email: yimr@gao.gov] if you have any questions or need any further information.

Yours sincerely,

Randall Yim
Managing Director, National Preparedness Team

attachment

United States General Accounting Office
Washington, DC 20548

March 18, 2002

QUESTIONS TO THE OFFICE OF HOMELAND SECURITY

Organization and Structure

How is the Office of Homeland Security (OHS) organized? What is its structure? What resources have been allocated to it?

Are any significant changes planned in the organization, structure, or resources of OHS?

It has been reported that OHS has established 22 multi-agency groups ranging from bio-preparedness to irradiation awareness [Newsweek, March 2002]. Is this accurate? Please describe the groups, including their purposes, composition, and goals.

National Strategy

What is the Office of Homeland Security current definition of homeland security, and will a revised definition be included in the forthcoming national strategy document?

What are the key elements of the process being used to develop the national strategy?

How have the various departments and agencies been involved in the process?

How has OHS integrated the views and perspectives of state and local government agencies and private entities in development of the national strategy?

What is the anticipated date for release of either the draft and/or final versions of the national strategy for homeland security currently being prepared by OHS?

How will OHS monitor the implementation of the national strategy and institute a process of making necessary refinements to the strategy over time?

What role did OHS play in the establishment of the new Homeland Security Threat Advisory System?

What role is OHS playing in other major national homeland security issues (for example, student visas; border security; bio-terrorism)?

Resource Allocations

Given the state of the budget process in relation to the establishment of OHS, to what extent was the process described in Executive Order 13228 followed for FY 02 and FY 03? Are there any major changes planned in the process?

Did OHS provide guidance for the following:

- 1) programs to be included in a federal agency's proposed budget related to homeland security;
- 2) prioritization or balancing of homeland security programs in relation to other programs;
- 1) agency performance goals and/or expectations related to homeland security;
- 2) accountability mechanisms to track use of funding or to judge efficacy of funding and programs related to homeland security?

If OHS did prepare or distribute guidance on any items described above, please provide copies of such guidance.

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

DANIEL K. INOUYE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
PATRICK J. LEAHY, VERMONT
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA
HERB KOHL, WISCONSIN
PATTY MURRAY, WASHINGTON
BYRON D. ORSKAMP, NORTH DAKOTA
Dianne Feinstein, CALIFORNIA
MICHAEL J. DURBIN, ILLINOIS
TIM WORTON, SOUTH DAKOTA
MARY L. LANDRIEU, LOUISIANA
JACK REED, RHODE ISLAND

TED STEVENS, ALASKA
THOMAS COCHRAN, MISSISSIPPI
ARLEN SPECTER, PENNSYLVANIA
ROBERT C. ROBERTS, NEW MEXICO
CHRISTOPHER S. BOND, MISSOURI
MITCH MCCONNELL, KENTUCKY
CONRAD BURNS, MONTANA
RICHARD C. SHELBY, ALABAMA
JUDY BARTO, NEW HAMPSHIRE
ROBERT F. BENNETT, UTAH
BEN NORTON, COLORADO
LARRY CRAIG, IDAHO
RAY BAILEY HUTCHISON, TEXAS
MIKE DEWINE, OHIO

TERENCE E. LILLY, STAFF DIRECTOR
STEVEN J. CORTESE, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6026

www.senate.gov/appropriations

April 4, 2002

The Honorable Tom Ridge
Director
Office of Homeland Security
The White House
Washington, D.C. 20500

Dear Director Ridge:

I appreciate your letter of March 25, 2002, addressed to me and with a copy sent to my colleague, Senator Ted Stevens, in which you offer to meet publicly with the members of the Senate and the House of Representatives later this month in an informal setting. After speaking with you and carefully considering your proposal, however, I find that there are certain concerns for the Senate's institutional prerogatives which give me pause.

The U. S. Constitution, in Article I, section 5, clause 2, provides each House of Congress with the exclusive authority to create its own rules. The traditional method that the Senate has chosen for gathering information and vetting proposed legislation, including legislation making appropriations, is through the committee system. Committees are a central organizational feature of the United States Senate. In 1816, Senate Rule 42 established eleven "standing" committees including the Finance Committee, from which the Appropriations Committee emerged in 1867. The committees themselves publish additional rules governing their procedures pursuant to Rule XXVI.

Your proposal is a unique one. In fact, I am unaware of any instance in which a public briefing has been used as a substitute for responding to a Senate Appropriations Committee request for testimony concerning funding needs.

In addition to being unique, the approach you suggest seems to be quite contrary to the tried and true method that the Senate relies on for guidance on funding matters, which is formal hearings by the Committee on Appropriations. Replacing the mechanism that the Senate itself has chosen and has practiced for decades for gathering appropriations-related information seems to be unnecessary in this case, and probably unwise from an institutional perspective. The proposal undercuts the authority of the Appropriations Committee to seek the special information it needs to make the funding decisions which the Senate has delegated to it in the manner that the Senate's rules provide. Many of the members of the Appropriations Committee have long years of experience in the unique exercise of the most important power of the people's elected representatives in Congress: the power of the purse. Certainly, it seems prudent and wise for the Committee to conduct business in the manner it has traditionally found to be the most efficient

Director Tom Ridge
 April 4, 2002
 Page 2

and expeditious when rendering its judgment on funding matters, which it is charged by the Senate to do.

It is the unquestionable duty of all citizens to cooperate with Congress in its effort to obtain the information needed for intelligent legislative action. The Senate Appropriations Committee is the representative of the Senate, and the Committee serves as the eyes and ears of the Senate when it comes to obtaining critical information regarding funding priorities.

Director Ridge, pursuant to the President's Executive Order establishing your office, you are the central person in the Administration who can answer questions and provide information about the homeland security priorities of the federal government. Acceptance of your proposal not to testify in a formal committee hearing as set forth above would be a major departure from the Senate's traditions and long-standing practices regarding the expenditure of public monies. Compounding the problem is the lack of any discernable justification for such a departure. To the contrary, the many strong justifications for your appearance before the Committee are plainly evident. The decisions which you make as Director of the Office of Homeland Security undoubtedly will play a large role in thousands of funding decisions in the coming years, and there is simply no rational reason for avoiding the Committee which has to review and recommend expenditures from the U.S. Treasury to the full Senate and the American people.

The Senate Appropriations Committee's request for you to appear at an upcoming hearing on homeland security is both simple and straightforward. When President Bush announced your selection as Director of the Office of Homeland Security, he said that this "Cabinet-level position" would "lead, oversee and coordinate a comprehensive national strategy to safeguard our country against terrorism, and respond to any attacks that may come."

As such, the Senate Appropriations Committee needs to hear from you directly in the role that the President outlined in his joint address to Congress on September 20, 2001. The Committee plans to also hear from several Cabinet secretaries and other Administration officials about their specific initiatives and funding needs, but it is essential that, as the one person in the Administration with the responsibility for the effective policy development and implementation of present and future efforts to protect the American people within our nation's borders, the Committee hear your views and your strategies. As you said in your news conference of October 18, 2001, you have a critical mission: "[I]f there is a gap, if there is something I think that needs to be done differently, if there are additional preventive measures I think need to be taken, if I think we have overlooked something, I make the call." The Appropriations Committee needs you to answer our call.

As for the claim that there is a separation of powers issue somehow involved if you would accept our invitation to testify voluntarily about funding matters before the Senate Appropriations Committee, I do not see it. In addition to the numerous Executive Branch officials who routinely

Director Tom Ridge
April 4, 2002
Page 3

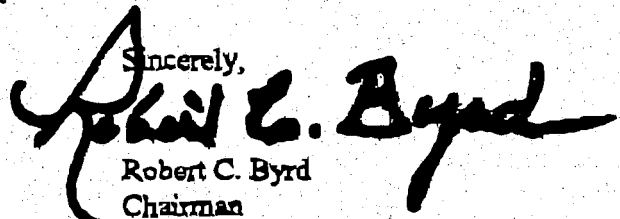
testify before the Senate Appropriations Committee, Supreme Court Justices regularly testify at Committee hearings regarding Judicial Branch budget requests. The only precedent that could possibly be set by your testimony might involve some claim of Executive Privilege, but I have repeatedly assured you and several presidential assistants that the Appropriations Committee has no interest in your private advice to the President. We have no interest in speaking to you in your role as "Assistant to the President for Homeland Security." Our interest is in speaking to you about your plans and programs as "Director of the Office of Homeland Security."

Our homeland defense hearings are not investigatory hearings; they are fact-finding hearings. As is customary in hearings of this nature, our witnesses will not be put under oath. The hearings are designed to provide the Committee, the Senate, and the American people with a comprehensive understanding of the homeland security efforts already underway and the plans for the future. As the Senate prepares to craft the supplemental appropriations bill and the Fiscal Year 2003 appropriations bills, it is imperative that we hear from you about the Administration's homeland defense budget requests.

I appreciate very much your proposal. But, as a former member of the House of Representatives, you understand the critical need for formal public hearings of the Appropriations Committee in matters involving public funds. Senator Stevens and I have asked for a meeting with President Bush to discuss your appearance before our Committee. I look forward to that meeting, and I also look forward to your testimony.

I thank you for your courtesy and your cooperation.

Sincerely,



Robert C. Byrd
Chairman

U.S. Senate Appropriations Committee

cc: Senator Ted Stevens

THE WHITE HOUSE

WASHINGTON

March 13, 2002

Dear Senator Stevens:

First, I apologize for the tardiness of this reply. Next, I want to thank you for your letter to Assistant to the President for Homeland Security Tom Ridge. The President and the Administration greatly appreciate the continued interest and involvement of you, the Committee on Appropriations, and the entire Congress in the critical homeland security issues facing the Nation. We share your view that it is essential for Federal, state, and local governments to work together closely as part of the significant and sustained national effort to defend the United States and the American people.

The Administration is committed to ensuring that you and the Congress receive the appropriate information you need with respect to the Administration's homeland security policies and practices. As you know, the various Executive Branch departments and agencies with responsibility for homeland security continue to provide substantial amounts of information to Congress. Executive Branch officials such as Attorney General John Ashcroft, Director Robert Mueller of the Federal Bureau of Investigation, and Director Joseph Allbaugh of the Federal Emergency Management Agency have regularly testified before Congress about homeland security and other issues. Director Mitch Daniels of the Office of Management and Budget has regularly testified and provided information on issues related to the budget. In addition, Governor Ridge and other Presidential advisors have met with and provided briefings on homeland security and budgetary issues to many Members of Congress and their staffs on numerous occasions over the last six months. These kinds of activities -- all of which are designed to ensure that Congress has the information it needs on homeland security policy -- will continue in the future.

In your letter, you request that Governor Ridge formally testify before your Committee. The long-standing position of Presidents of both parties, a position long respected by Congress, is that members of the President's staff do not ordinarily testify before congressional committees. This position has long applied to Presidential advisors such as the Chief of Staff, the Counsel, the National Security Advisor, and the other immediate advisors to the President such as Governor Ridge. Therefore, we respectfully must decline your invitation for Governor Ridge to formally testify before the Committee, but also wish to emphasize that Governor Ridge and others in the Executive Branch remain available to meet with you and your entire Committee. Additionally,

Senator Stevens
March 13, 2002
Page 2

Governor Ridge, White House Counsel Alberto Gonzales, and I would be happy to meet with you about this matter at your convenience.

Sincerely,



Nicholas E. Calio
Assistant to the President
for Legislative Affairs

The Honorable Ted Stevens
Ranking Member
Senate Appropriations Committee
United States Senate
Washington, DC 20510

Identical letter sent to Chairman Robert C. Byrd



Office of Legislative Affairs

Senate Liaison

107 East Wing
1600 Pennsylvania Avenue
Washington, D.C. 20502
Phone: 202-456-6493
Fax: 202-456-6468

To: Brett Kavanaugh _____ Ziad Ojakli _____ ☒ Christine Ciccone
Fax: ~~202-456-6468~~ 6-1647 _____ Heather Wingate _____ Dirksen Lehman
Phone: _____ _____ Alison Jones _____ Ashley Holbrook
Date: 3/19 _____ _____ Daniel McCarthy _____ Matthew Kirk
Re: _____ Pages: _____ (Including cover)

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

White House Aides Testifying Before Congress

LOUIS FISHER

*Senior Specialist in Separation of Powers
Congressional Research Service*

Although White House aides do not testify before congressional committees on a regular basis, under certain conditions they do. First, intense and escalating political embarrassment may convince the White House that it is in the interest of the president to have these aides testify and ventilate the issue fully. Second, initial White House resistance may give way in the face of concerted congressional and public pressure. This article identifies the instances since 1970 when White House aides have testified.

Even when the White House decides that aides shall not testify, other mechanisms may be offered for satisfying congressional interests. For example, the White House may suggest that the aides meet with a committee or subcommittee chair to respond to inquiries and respond to any written questions the chair submits. White House aides are also subject to deposition by congressional committees.

An example of a compromise arrangement occurred in 1981, when Martin Anderson, President Ronald Reagan's assistant for policy development, refused to appear before a House Appropriations subcommittee responsible for funding his budget request for the Office of Policy Development. The subcommittee retaliated by deleting all of the \$2,959,000 requested for the office. In doing so, it pointed out that the previous heads of the office (Stuart Eizenstat in the Carter years, James M. Cannon in the Ford years, and Kennedy R. Cole in the Nixon years) had appeared before the subcommittee.

Fred F. Fielding, White House counsel, offered legal grounds to support Anderson's decision. As a senior adviser to President Reagan, Anderson participated in the deliberative process by providing "frank and candid advice." Such candor "is possible only in an atmosphere that insures that the advice will remain confidential."² These arguments are strained. Cabinet heads are also senior advisers to presidents and are part of a deliberative process requiring candor and confidentiality. They nevertheless regularly appear before congressional committees, and may (as could Anderson) at any time decline to respond to committee questions and inquiries that jeopardize confidentiality. In many cases a committee is interested in specific facts and general policies, not in the deliberative process.

In his legal memorandum, Fielding said that Anderson "remains willing to meet informally with the Subcommittee to provide such information as he can consistent with his obligations of confidentiality to the President."³ If he could meet informally, why not formally? Certainly informal meetings pose some risk to confi-

dentiality and inquiries into the deliberative process. Advisers can fend off such inquiries in informal meetings and can do the same in formal hearings. After the subcommittee mark-up in 1981, Anderson met informally and off the record with the subcommittee.⁴ After the Senate restored almost all of the funds, Congress appropriated \$2,500,000 instead of the budget request of \$2,959,000.⁵

Nomination of Richard G. Kleindienst (1972)

President Richard Nixon's nomination of Richard G. Kleindienst in 1972 to be attorney general precipitated lengthy hearings by the Senate Committee on the Judiciary. Columnist Jack Anderson charged that Kleindienst had lied in disclaiming any role in the Justice Department's out-of-court settlement of antitrust cases against International Telephone and Telegraph Corp (ITT). The Senate was interested in having Peter Flanigan, a presidential aide and the chief White House figure involved in the controversy, testify. However, on April 12, 1972, White House counsel John W. Dean III wrote to the committee that the doctrine of executive privilege would protect Flanigan and other White House aides from testifying before congressional committees: "Under the doctrine of separation of powers, and long-established historical precedents, the principle that members of the President's immediate staff not appear and testify before congressional committees with respect to the performance of their duties is firmly established."⁶ Senator Sam J. Ervin, Jr. made it clear that the Senate should not vote on Kleindienst's confirmation "so long as those fellows aren't coming up here and the White House is withholding information."⁷ Within a few days the White House retreated from Dean's theory and Flanigan appeared at the hearings on April 20. Following committee action, the Senate confirmed Kleindienst by a vote of 64 to 19.⁸

Watergate (1973-1974)

The June 17, 1972, break-in of the Democratic national headquarters at the Watergate office building in Washington, D.C., led to the establishment of the Senate Select Committee on Presidential Campaign Activities. The hearings investigated not only the break-in but a number of other activities. President Nixon at first opposed the appearance of White House aides at congressional hearings. When asked at a press conference on March 2, 1973, why he would object to the appearance of White House Counsel John Dean, he replied: "Well, because it is executive privilege. I mean you can't—I, of course—no President could ever agree to allow the Counsel to the President to go down and testify before a committee."⁹ Ten days later he elaborated on his constitutional reasons for not only denying Congress certain documents but for refusing to allow White House aides to testify:

Under the doctrine of separation of powers, the manner in which the President personally exercises his assigned executive powers is not subject to questioning by another branch of Government. If the President is not subject to such questioning, it is equally appropriate that members of his staff not be so questioned, for their roles are in effect an extension of the Presidency.¹⁰

*Ridge not
confirmed position*

Three days later, on March 15, President Nixon further explained the constitutional basis for denying Congress the right to question Dean at legislative hearings: "Mr. Dean is Counsel to the White House. He is also one who was counsel to a number of people on the White House Staff. He had, in effect, what I would call a double privilege, the lawyer-client relationship, as well as the Presidential privilege."¹¹ He reiterated his position that members of the White House staff "will not appear before a committee of Congress in any formal session."¹²

On April 17, however, President Nixon agreed to allow White House aides to testify before the Senate Select Committee under four ground rules: White House aides would appear, in the first instance, in executive session, if appropriate; executive privilege would be expressly reserved and could be asserted during the course of the questioning to any question; the proceedings could be televised; and all members of the White House staff would appear "voluntarily" and testify under oath to "answer fully all proper questions."¹³ On April 30, President Nixon announced the resignation of Dean and two other White House aides, H.R. Halderman and John D. Ehrlichman.¹⁴

On July 7, President Nixon advised the Senate Select Committee that he would not testify or permit access to presidential papers. At the same time, he relaxed some of the guidelines for White House staff. He directed that the right of executive privilege concerning possible criminal conduct "no longer be invoked for present or former members of the White House staff."¹⁵ He also agreed to permit "the unrestricted testimony of present and former White House staff members" before the Committee.¹⁶ Beginning on May 17, 1973, and continuing until September 23, 1975, a number of White House aides testified before the Committee.

Bruce A. Kehrli, special assistant to the president. "Presidential Campaign Activities of 1972: Senate Resolution 60" (Book 1), hearings before the Senate Select Committee on Presidential Campaign Activities, 93d Cong., 1st sess. (1973). Hereafter PCA (Book 1); May 17, 1973.

Hugh W. Sloan, Jr., formerly employed as staff assistant to the president. PCA (Book 2); June 6-7, 1973.

Herbert L. Porter, formerly employed by the White House in the Office of the Director of Communications. PCA (Book 2); June 7, 12, 1973.

Jeb Stuart Magruder, former special assistant to the president. PCA (Book 2); June 14, 1973.

John W. Dean III, former counsel to the president. PCA (Book 3); June 25-26, 1973. PCA (Book 4); June 27-29, 1973.

Richard A. Moore, special counsel to the president. PCA (Book 5); July 12-13, 1973.

Alexander P. Butterfield, former deputy assistant to the president. PCA (Book 5); July 16, 1973.

Herbert W. Kalmbach, personal attorney to the president. PCA (Book 5); July 16-17, 1973. PCA (Book 17); June 13, 1974. PCA (Book 21); March 21, 1974. PCA (Book 23); May 5, 1974.

Fred C. LaRue, former special counsel to the president. PCA (Book 6); July 18, 1973. PCA (Book 23); May 28, 1974.

Gordon Strachan, former staff assistant to H.R. Haldeman. PCA (Book 6); July 20, 23, 1973. PCA (Book 16); March 12, 1974.

John Ehrlichman, former chief domestic adviser to the president. PCA (Book 6); July 24-25, 1973. PCA (Book 7); July 26, 27, and 30, 1973. PCA (Book 16); February 8, 1974.

H.R. Haldeman, former assistant to the president. PCA (Book 7); July 30, 1973. PCA (Book 8); July 31 and August 1, 1973. PCA (Book 16); January 31, 1974.

Patrick J. Buchanan, special consultant to the president. PCA (Book 10); September 26, 1973.

Clark MacGregor, former counsel to the president for congressional relations. PCA (Book 12); November 1, 1973.

William H. Marumoto, formerly employed by the White House under Fred Malek. PCA (Book 13); November 7, 1973.

L. J. Evans, Jr., former staff assistant to the president. PCA (Book 18); May 28, 1974.

Rose Mary Woods, personal secretary to President Nixon. PCA (Book 22); March 22, 1974.

J. Frederick Buzhardt, special counsel to the president. PCA (Book 22); April 10, 1974. PCA (Book 23); May 7, 1974.

Gen. Alexander M. Haig, Jr., staff coordinator to the president. PCA (Book 23); May 2 and 15, 1974.

Leonard Garment, assistant to the president. PCA (Book 23); May 17, 1974.

Lawrence M. Higby, former deputy assistant to the president. PCA (Book 23); May 22, 1974.

Thomas H. Wakefield, counsel to President Nixon. PCA (Book 24); June 10, 1974.

Impeachment Hearings (1974)

Following the Watergate hearings conducted by Senator Ervin, the House Judiciary Committee held hearings on the impeachment of President Nixon. Several White House aides testified at the House hearings.

Alexander P. Butterfield, former deputy assistant to the president. "Testimony of Witnesses" (Book I), hearings before the House Committee on the Judiciary, 93d Cong., 2d sess. (1974). Hereafter: Impeachment hearings. July 2, 1974.

John W. Dean III, former counsel to the president. Impeachment hearings (Book II); July 11, 1974.

Charles W. Colson, former special counsel to the president. Impeachment hearings (Book III); July 15-16, 1974.

Herbert W. Kalmbach, former personal attorney to the president. Impeachment hearings (Book III); July 16-17, 1974.

Huston Plan (1975)

On June 5, 1970, President Nixon called in FBI Director J. Edgar Hoover, CIA Director Richard Helms, National Security Agency Director Admiral Gayler, and Defense Intelligence Agency Director General Bennett. President Nixon directed these officials to get better information about domestic dissenters. In a memorandum, White House aide Tom Charles Huston recommended a number of options (known as the Huston Plan), including illegal opening of mail, burglary, surreptitious entry, and other methods. President Nixon approved the operation and submitted the plan to the FBI, the CIA, and the military intelligence agencies for implementation. Five days later he revoked the plan at the insistence of the FBI director and the attorney general, but the intelligence agencies ignored the revocation and continued to carry out some of the recommendations, including mail-opening and surveillance.¹⁷ Huston was called before a Senate select committee to testify.

Tom Charles Huston, former associate counsel and staff assistant to President Nixon. "Intelligence Activities: Senate Resolution 21" (Vol. 2), hearings before the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 1st sess. (1975). September 23-25, 1975.¹⁸

Pike Committee (1975)

On February 19, 1975, the House created a Select Committee on Intelligence to investigate the CIA and other parts of the U.S. intelligence establishment. The first chair was Lucien N. Nedzi (D-MI). After a number of problems prevented the committee from functioning effectively, it was abolished and replaced by a new select committee, headed by Otis G. Pike (D-NY). Several White House aides, former and current, appeared at the hearings.

Henry A. Kissinger, secretary of state, but during this period he also served in a dual capacity as national security adviser until he was succeeded in the latter role by Brent Scowcroft. "U.S. Intelligence Agencies and Activities: The Performance of the Intelligence Community" (Part 2), hearings before the House Select Committee on Intelligence, 94th Cong., 1st sess. (1975). Hereafter "Intelligence hearings." October 31, 1975.

McGeorge Bundy, former assistant to the president for national security affairs. Intelligence hearings (Part 5); December 10, 1975.

Arthur Schlesinger, Jr., former special assistant to President John F. Kennedy. Intelligence hearings (Part 5); December 11, 1975.

William G. Hyland, deputy assistant to the president for national security affairs. Intelligence hearings (Part 5); December 17, 1975.

Billy Carter and Libya (1980)

In 1980, a special subcommittee of the Senate Judiciary Committee investigated whether Billy Carter, the president's brother, had influenced U.S. policy or committed criminal activities in his relationships with Libya. After hearing from numerous witnesses, including White House Counsel Lloyd Cutler and National Security Adviser Zbigniew K. Brzezinski, the subcommittee found that he did not influence U.S. policy and was not involved in criminal wrongdoing. On July 24, 1980, the White House announced that President Carter had instructed all members of the White House staff to cooperate fully with the special subcommittee, that he did not expect to assert claims of executive privilege with respect to these matters, and that White House staff were instructed "to respond fully to such inquiries from the subcommittee and to testify if the subcommittee determines that oral testimony is necessary."¹⁹

Lloyd Cutler, counsel to President Jimmy Carter. "Inquiry Into the Matter of Billy Carter and Libya" (Vol. II), hearings before the Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments of the Senate Committee on the Judiciary, 96th Cong., 2d sess. (1980). September 10, 1980.

Dr. Zbigniew Brzezinski, assistant to the president for national security affairs. Same hearings. September 17, 1980.

Iran-Contra Affair (1987)

On November 3, 1986, a Lebanese weekly reported that the United States had secretly sold arms to Iran. Although the Reagan administration initially denied the reports, within a few weeks it was evident that the United States had sold arms to Iran with the hope of gaining the release of American hostages in Lebanon. On November 25, Attorney General Edwin Meese III announced that proceeds from the Iran arms sales had been "diverted" to the Nicaraguan resistance at a time when Congress had prohibited U.S. military aid to the Contras.

President Ronald Reagan ordered an internal investigation and then cooperated with an investigation initiated by Congress. He did not assert executive privilege. He told executive officials, including those in the White House, to assist with the legislative inquiry in any way possible, including testifying before Congress. Both Houses of Congress created special committees to study the matter and issue a report. Several White House aides testified at the congressional hearings.

Robert C. McFarlane, former deputy assistant to the president for national security affairs. "Testimony of Robert C. McFarlane, Gaston J. Sigur, Jr., and Robert W. Owen" (Vol. 100-2), joint hearings before the House Select Committee to Investigate Covert Arms Transactions With Iran and Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, 100th Cong., 1st sess. (1987). Hereafter Iran-Contra hearings. May 11-14, 1987. Iran-Contra hearings (Vol. 100-7: Part II); July 14, 1987.

Bretton G. Sciaroni, counsel to the president's intelligence board. Iran-Contra hearings (Vol. 100-5); June 8, 1987.

Fawn Hall, secretary to Lt. Col. Oliver L. North. Iran-Contra hearings (Vol. 100-5); June 8, 1987.

Lt. Col. Oliver L. North, former staff member of the National Security Council. Iran-Contra hearings (Vol. 100-7: Part I); July 7-10, 1987. Iran-Contra hearings (Vol. 100-7: Part II); July 10, 13, and 14, 1987.

Adm. John M. Poindexter, former national security adviser to the president. Iran-Contra hearings (Vol. 100-8); July 15, 16, 17, 20 and 21, 1987.

White House-Treasury Contacts (1994)

Congressional hearings in 1994 focused on whether White House aides had inappropriately learned details of a Resolution Trust Corporation (RTC) investigation of the failed Madison Guaranty Savings and Loan. In March 1993, Deputy Treasury Secretary Roger C. Altman became interim chief of the RTC. William Roelle, an RTC senior vice president, said he briefed Altman that RTC had forwarded a criminal referral to the FBI and the U.S. Attorney in Little Rock, naming the Clintons as potential beneficiaries of alleged wrongdoing at Madison. On September 29, 1993, Treasury General Counsel Jean E. Hanson told White House Counsel Bernard Nussbaum of the referrals. Other contacts took place between the Treasury Department and the White House concerning the referrals. Both Houses of Congress held hearings to investigate these contacts. Among the many witnesses were White House aides.

Lloyd N. Cutler, special counsel to the president. "White House Contacts with Treasury/RTC Officials About 'Whitewater'-Related Matters" (Part 1), hearing before the House Committee on Banking, Finance and Urban Affairs, 103d Cong., 2d sess. (1994). Hereafter White House/Treasury hearings. July 26, 1994. Regarding the congressional oversight hearings, Mr. Cutler stated that "No White House staff witness has declined to appear" (page 12 of hearing).

Lisa M. Caputo, press secretary to the first lady. White House/Treasury hearings (Part 2); July 28, 1994.

W. Neil Eggleston, associate counsel to the president. White House/Treasury hearings (Part 2); July 28, 1994.

Mark D. Gearan, assistant to the president for communications. White House/Treasury hearings (Part 2); July 28, 1994.

Harold Ickes, assistant to the president, deputy chief of staff. White House/Treasury hearings (Part 2); July 28, 1994.

Bruce Lindsey, assistant to the president and senior adviser. White House/Treasury hearings (Part 2); July 28, 1994.

Thomas F. McLarty III, former White House chief of staff. White House/Treasury hearings (Part 2); July 28, 1994.

Bernard W. Nussbaum, former special counsel to the president. White House/Treasury hearings (Part 2); July 28, 1994.

John D. Podesta, assistant to the president, staff secretary. White House/Treasury hearings (Part 2); July 28, 1994.

Clifford Sloan, associate counsel to the president. White House/Treasury hearings (Part 2); July 28, 1994.

George R. Stephanopoulos, senior policy adviser to the president. White House/Treasury hearings (Part 2); July 28, 1994.

Margaret Ann Williams, chief of staff to the first lady. White House/Treasury hearings (Part 2); July 28, 1994.

Joel I. Klein, deputy counsel to the president. "Hearings Relating to Madison Guaranty S&L and the Whitewater Development Corporation—Washington, DC Phase" (Volume IV), hearings before the Senate Committee on Banking, Housing, and Urban Affairs, 103d Cong., 2d sess. (1994). Hereafter Senate S&L hearings. August 3, 1994.

W. Neil Eggleston, deputy counsel to the president. Senate S&L hearings; August 3, 1994.

Clifford M. Sloan, associate counsel to the president. Senate S&L hearings; August 3, 1994.

Beth Nolan, associate counsel to the president. Senate S&L hearings; August 3, 1994.

Thomas F. McLarty III, counselor to the president, former chief of staff to the president. Senate S&L hearings; August 4, 1994.

Margaret A. Williams, assistant to the president and chief of staff to the first lady. Senate S&L hearings; August 4, 1994.

Harold Ickes, assistant to the president and deputy chief of staff. Senate S&L hearings; August 4, 1994.

Bruce R. Lindsey, assistant to the president and senior adviser. Senate S&L hearings; August 4, 1994.

George R. Stephanopoulos, senior adviser to the president for policy and strategy. Senate S&L hearings; August 4, 1994.

John D. Podesta, assistant to the president and White House staff secretary. Senate S&L hearings; August 4, 1994.

Bernard W. Nussbaum, former counsel to the president. Senate S&L hearings; August 4, 1994.

Lloyd N. Cutler, special counsel to the president. Senate S&L hearings; August 5, 1994.

Travelgate (1995–1996)

On May 19, 1993, seven employees of the White House Travel Office were dismissed with the charge that they followed poor management practices. Dee

TESTIFYING BEFORE CONGRESS | 147

Dee Myers, President Clinton's press secretary, also stated that the FBI had been asked to examine the records of the Travel Office, suggesting that the employees might have been guilty of criminal actions as well. After the Republican victories in the 1994 elections, the House Committee on Government Reform and Oversight initiated an investigation that included hearings with former White House aides.

John D. Podesta, former assistant to the president and White House staff secretary. October 24, 1995.

David Watkins, former director of the White House office of administration. January 17, 1996.

Whitewater (1995-1996)

On May 17, 1995, the Senate created a Special Committee to Investigate Whitewater Development Corporation and Related Matters. The purpose of the committee was to look into a number of White House activities, to determine matters such as whether improper conduct occurred regarding the way White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death; whether the White House engaged in improper contacts with any other agency or department with regard to confidential Resolution Trust Corporation information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation; and whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of deposition testimony, were improperly released to White House officials prior to their testimony before the Senate Committee on Banking.

Mark D. Gearan, assistant to the president and director of communications and strategic planning. July 25, 1995.

Sylvia Mathews, former special assistant to the assistant to the president for economic policy. July 25, 1995.

Patsy L. Thomasson, deputy assistant to the president, assistant director for presidential personnel, former director of office of administration and special assistant to the president for management and administration. July 25, 1995.

David Watkins, former assistant to the president for management and administration. July 25, 1995.

Evelyn Lieberman, White House deputy press secretary for operations, former assistant to the chief of staff to the first lady. July 26, 1995.

Margaret A. Williams, assistant to the president and chief of staff to the first lady. July 26, 1995.

Deborah Gorham, assistant to associate counsel to the president. August 1, 1995.

Linda Tripp, former executive assistant to the counsel to the president. August 1, 1995.

Thomas Castleton, former special assistant to the counsel to the president. August 3, 1995.

Carolyn C. Huber, special assistant to the president and director of personal correspondence. August 3, 1995.

Stephen Neurwirth, associate counsel to the president. August 3, 1995.

Clifford M. Sloan, former associate counsel to the president. August 3, 1995.

William Burton, former counselor to the president. August 7, 1995.

David Gergen, former counselor to the president. August 7, 1995.

Thomas F. McLarty III, counsel to the president, former chief of staff to the president. August 7, 1995.

John M. Quinn, assistant to the president and chief of staff to the vice president. August 7, 1995.

Bruce R. Lindsey, assistant to the president and deputy counsel, former assistant to the president, and senior adviser and director of presidential personnel. August 8, 1995.

Bernard W. Nussbaum, former White House counsel. August 9 and 10, 1995.

Margaret A. Williams, assistant to the president and chief of staff to the first lady. November 2, 1995, and December 11, 1995.

William Burton, former policy and staff director for White House chief of staff. December 13, 1995.

Sylvia M. Mathews, former special assistant to the assistant to the president for economic policy. December 13, 1995.

Lloyd N. Cutler, former special counsel to the president. November 9, 1995.

Jane Sherburne, special counsel to the president. November 9, 1995.

W. Neil Eggleston, former associate counsel to the president. November 28, 1995.

Bruce R. Lindsey, deputy counsel to the president. November 28, 1995.

William Kennedy, former associate counsel to the president. December 5, 1995.

W. Neil Eggleston, former associate counsel to the president. January 16, 1996.

William Kennedy, former associate counsel to the president. January 16, 1996.

Bruce R. Lindsey, deputy counsel to the president. January 16, 1996.

Carolyn C. Huber, special assistant to the president and director of personal communications. January 18, 1996.

Bobby J. Nash, assistant to the president and director of presidential personnel. January 31, 1996.

Jane Sherburne, special counsel to the president. February 8, 1996.

Dennis Freeman, assistant White House chief usher. February 8, 1996.

Capricia P. Marshall, special assistant to the first lady. February 8, 1996.

Gary Walters, White House chief usher. February 8, 1996.

Nancy V. Hemreich, deputy assistant to the president and director of Oval Office operations. February 13, 1996.

Helen H. Dickey, White House database administrator. February 14, 1996.

Mark D. Gearan, former assistant to the president for communications. February 15, 1996.

Harold Ickes, deputy chief of White House staff. February 22, 1996.

Bobby J. Nash, assistant to the president and director of presidential personnel. April 30, 1996.

Patsy L. Thomasson, deputy assistant to the president and deputy director of presidential personnel. May 9, 1996.

Patti Solis, special assistant to the president and director of scheduling for the first lady. May 14, 1996.

White House Access to FBI Files (1996)

In June 1996, the House Committee on Government Reform and Oversight learned that the Clinton White House had obtained from the FBI hundreds of confidential files of individuals who had worked in the Reagan and Bush administrations. President Clinton explained that the request for files of people who were no longer with the White House was merely a "bureaucratic snafu." Critics charged that the White House intended to use the files for partisan, political purposes, searching for derogatory information. FBI Director Louis J. Freeh announced that the White House action constituted "egregious violations of privacy." Both Houses called a number of former and current White House aides to testify.

1. House Committee on Government Reform and Oversight, June 19, 1996:

Jane Dannenhauer, director of the White House office of personnel security in the Nixon, Ford, Reagan, and Bush administrations, until her retirement in March 1993.

Nancy Gemmell, who worked for twelve years in the White House office of personnel security.

A.B. Culvahouse, White House counsel for President Reagan.

C. Boyden Gray, White House counsel for President Bush.

Richard Hauser, former deputy White House counsel for President Reagan.

2. Senate Committee on the Judiciary, June 20, 1996:

Bill Ray Dale, former director of the White House Travel Office.

Anita McBride, former director of the White House Personnel Office.

Mary Kate Downham Carroll, former personnel assistant of the White House Personnel Office.

Graven W. Craig, former intern, White House Office of Public Liaison.

Ellen J. Gobet, former staff assistant, White House Office of Legislative Affairs.

3. House Committee on Government Reform and Oversight, June 26, 1996:

Bernard W. Nussbaum, former White House counsel.

Craig Livingstone, director of White House Office of Personnel Security. [At the hearing he announced his resignation, effective immediately.]

Anthony Marceca, former detailee to the White House Office of Personnel Security.

William H. Kennedy III, former associate counsel in the White House Counsel's office.

Lisa Wetzel, former staff with the White House Office of Personnel Security.

4. Senate Committee on the Judiciary, June 28, 1996:

Charles Easley, director, White House Office of Personnel Security.

Mary Beck, associate director for human resources management, Office of Administration, Executive Office of the President.

Craig Livingstone, former director of the White House Office of Personnel Security.

Lisa Wetzel, former staff with the White House Office of Personnel Security.

Nancy Gemmell, former staff with the White House Office of Personnel Security.

Anthony Marceca, former detailee to the White House Office of Personnel Security. [He declined to testify, citing Fifth Amendment self-incrimination grounds.]

5. Senate Committee on the Judiciary, July 18, 1996:

Anthony Marceca, former detailee to the White House Office of Personnel Security. [At this closed-door session, he repeatedly invoked his Fifth Amendment privilege not to incriminate himself.]

The above-named hearings do not include the annual hearings on the White House budget conducted by the Appropriations Committees. White House aides in charge of management and administration regularly appear at these hearings to support the budget justifications for the White House. For example, several White House aides appeared at the House hearings in 1995.

Patsy L. Thomason, special assistant to the president for management and administration and director of the Office of Administration.²⁰

John W. Cressman, deputy director, [White House] Office of Administration. March 14, 1995.²¹

Jurg E. Hochuli, director, Financial Management Division, [White House] Office of Administration.²²

The same three White House aides appeared at the hearings on March 27, 1995, conducted by a subcommittee of the Senate Committee on Appropriations.²³

Conclusions

The White House is usually insulated from congressional inquiry because of a long-standing comity that exists between Congress and the presidency. By and large, each branch concedes a certain amount of autonomy to the other. Only in clear cases of abuse and obvious bad faith will Congress insist that White House aides appear and give an account of their activities. The White House could minimize such requests by conducting its operations with integrity and good judgment, but the growing dominance in the White House of aides with little experience other than running a campaign suggests that future White House mishaps, especially during first terms, will remain more the rule than the exception.

Notes

1. U.S. Congress, House, 1981, H.R. 97-171, 97th Cong., 1st sess., July 9, 1981, p. 30.
2. *Ibid.*, p. 62.
3. *Ibid.*, p. 63.
4. *Ibid.*, p. 30.
5. *Budget of the United States Government (Appendix)*, Fiscal Year 1983, p. 1-C5.
6. *Wall Street Journal*, April 13, 1972, p. 4.
7. *The New York Times*, April 13, 1972, p. 3.
8. U.S. Congress, Senate, Senate Committee on the Judiciary, Peter M. Flanagan, Assistant to the President, testifying in *Richard C. Kleindienst-Resumed (Part 3)*, 92nd Cong., 2d sess., April 20, 1972, p. 1585.
9. *Public Papers of the Presidents*, 1973, p. 160 (1975).
10. *Ibid.*, p. 185.
11. *Ibid.*, p. 203.
12. *Ibid.*, p. 211.
13. *Ibid.*, p. 299.
14. *Ibid.*, p. 326.
15. *Ibid.*, pp. 636-7.
16. *Ibid.*, p. 637.
17. U.S. Congress, Senate, 1976, H.R. 94-755, 94th Cong., 2d sess., April 23, 1976, pp. 926-27.
18. The Senate select committee (the Church Committee) also heard from a number of former White House aides. On December 5, 1975, the committee received testimony from Clark Clifford, former counsel to President Truman; Cyrus Vance, former special representative of the president; and Morton H. Halperin, former assistant for planning, National Security Council staff. "Intelligence Activities: Senate Resolution 21" (Volume 7), hearings before the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 1st sess. (1975). The committee's report on assassination plots indicates that other former White House aides appeared in executive session to give testimony: Robert H. Johnson, a member of the National Security Council staff from 1951 to January 1962; Gordon Gray and Andrew Goodpastor, two members of President Eisenhower's staff responsible for national security affairs; Theodore Sorensen of President Kennedy's staff; McGeorge Bundy and Walter Rostow of President Lyndon B. Johnson's staff; and Henry Kissinger and Alexander Haig of President Nixon's staff. See U.S. Congress, Senate, *Alleged Assassination Plots Involving Foreign Leaders*, an interim report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 1st sess. November 20, 1975, pp. 55, 64, 111-3, 148, 156-7, 186-7, 246-54 (Committee Print 1975).
19. *Public Papers of the Presidents*, 1980-81 (II), 1982 p. 1420.
20. U.S. Congress, House, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year*

152 | PRESIDENTIAL STUDIES QUARTERLY

1996 (Part 2), hearings before the Subcommittee on the Treasury, Postal Service, and General Government Appropriations of the House Committee on Appropriations, 104th Cong., 1st sess., March 14, 1995.

21. *Ibid.*

22. *Ibid.*

23. U.S. Congress, Senate, Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1996.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	Dear Mr. President - To: POTUS - From: Robert Byrd	2	03/15/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: [CRS Report for Congress] [Folder 1]

FRC ID:

9696

FOIA IDs and Segments:

2014-0216-F 1

OA Num.:

2166

NARA Num.:

2077

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

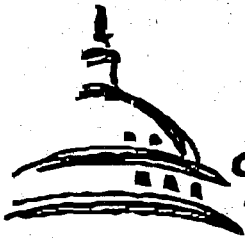
- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.



**Congressional
Research
Service**

RAFT

Memorandum

March 15, 2002

TO: Office of the Vice President
Attention: Candi Wolff

FROM: Harold C. Relyea
Specialist in American National Government
Government and Finance Division

SUBJECT: Voluntary Congressional Testimony by a Presidential Advisor During World War II or the Truman and Eisenhower Administrations

This memorandum responds to your request, conveyed by the CRS Director, for information on instances of voluntary congressional testimony by a presidential advisor during World War II (1941-1945), the Truman Administration (1945-1953), or the Eisenhower Administration (1953-1961). The term "presidential advisor" has been interpreted to mean a civilian executive branch official, other than a member of the traditional Cabinet, who consulted with the President concerning that official's responsibilities and activities and, as a consequence of his or her relationship with the President in this regard, might have been prevented from appearing before a congressional committee or subcommittee under a claim of executive privilege.

Instances of voluntary congressional testimony by a presidential advisor during the specified war periods are as follow:

- Donald M. Nelson, chairman of the War Production Board,¹ popularly known as the "arms czar," appeared before and cooperated with the Senate Special Committee to Investigate the National Defense Program ("Truman Committee") during World War II to report on and discuss war material production and related coordination matters.²

¹ Established by E.O. 9024 of Jan. 16, 1942, the War Production Board was technically located within the Office for Emergency Management, an agency within the Executive Office of the President, but operated independently as an arm of the President. The chairman of the board was presidentially appointed without Senate confirmation; eight other specified government officials were members of the board. The board was terminated by E.O. 9638 of Oct. 4, 1945.

² Donald M. Nelson, *Arsenal of Democracy: The Story of American War Production* (New York: Harcourt, Brace, 1946), pp. 128, 332; Donald H. Riddle, *The Truman Committee: A Study in* (continued...)

CRS-2

- Jonathan Daniels, Administrative Assistant to the President, White House Office, appeared before the Senate Committee on Agriculture and Forestry on February 28 and March 7 and 8, 1944, to discuss his involvement in the personnel policy of the Rural Electrification Administration.³
- Wallace H. Graham, Physician to the President, White House Office, appeared before the Senate Committee on Appropriations on January 13, 1948, to discuss information to which he might have been privy with regard to the commodity market.⁴
- Harry H. Vaughn, Military Aide to the President, White House Office, appeared before the Senate Committee on Expenditures in Executive Departments (now Governmental Affairs) on August 30 and 31, 1949, to discuss his personal involvement in certain government procurement contracts.⁵
- Donald S. Dawson, Administrative Assistant to the President, White House Office, appeared before the Senate Committee on Banking and Currency on May 10 and 11, 1951, to discuss allegations he had attempted to "dominate" the Reconstruction Finance Corporation and influence appointments to that body.⁶
- Sherman Adams, Assistant to the President, White House Office, appeared before the House Committee on Interstate and Foreign Commerce Committee on June 17, 1958, to discuss his involvement with certain lobbyists.⁷

I trust this information is responsive to your request. Please do not hesitate to call me at 707-8679 if I may be of additional assistance regarding this, or any other, matter.

DRAFT

¹ (...continued)

Congressional Responsibility (New Brunswick, NJ: Rutgers University Press, 1964), pp. 36, 70, 83-84.

² U.S. Congress, Senate Committee on Agriculture and Forestry, *Administration of the Rural Electrification Act*, hearings, 78th Cong., 2nd sess. (Washington: GPO, 1944), pp. 611ff, 695ff, 721ff.

³ U.S. Congress, Senate Committee on Appropriations, *Speculation in Commodity Markets*, hearings, 80th Cong., 2nd sess. (Washington: GPO, 1948), pp. 49ff.

⁴ U.S. Congress, Senate Committee on Expenditures in the Executive Departments, *Influence in Government Procurement*, hearings, 81st Cong., 1st sess. (Washington: GPO, 1949), pp. 495ff, 563ff.

⁵ U.S. Congress, Senate Committee on Banking and Currency, *Study of Reconstruction Finance Corporation*, hearings, 82nd Cong., 1st sess. (Washington: GPO, 1951), pp. 1709ff, 1795ff.

⁶ U.S. Congress, House Committee on Interstate and Foreign Commerce, *Investigation of Regulatory Commissions and Agencies*, hearings, 85th Cong., 2nd sess. (Washington: GPO, 1958), p. 3712 ff.

FAX TRANSMISSION

UNITED STATES DEPARTMENT OF JUSTICE

Office of Legal Counsel

950 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20530

PHONE: (202) 616-5438

FAX: (202) 305-8524

To: *Brett Kavanaugh*

Date: *3/19*

Office #:

Fax #: *458 5104*

Pages: *3*

(including cover sheet)

From:

Robert Delahunty

Subject:

CRS Study

COMMENTS:

