



President George W. Bush Oral History Project

Briefing Materials

Fred F. Fielding

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Presidential Oral History Program

MAY NOT BE REPRODUCED OR CIRCULATED

FRED F. FIELDING NEWS TIMELINE

Prepared by Victor V. Nemchenok

Miller Center, University of Virginia, 05/14/2010

- 1964** Fielding graduates from University of Virginia Law School, where he served on the editorial board of the *Virginia Law Review*. Upon graduating, Fielding joins the Philadelphia firm of Morgan, Lewis & Bockius.
- 1965** Fielding begins service in the U.S. Army, rising to the rank of captain.
- 1967** Fielding returns to Morgan, Lewis & Bockius as an associate.
- 1970-1974** Fielding serves as associate counsel and, briefly, as deputy counsel to President Richard Nixon.
- 1974** Fielding returns to Morgan, Lewis & Bockius as a partner in their Washington, D.C. office.
- 1981-1986** Fielding serves as White House counsel to President Ronald Reagan.
- 1986** Fielding joins the Washington, D.C. law firm of Wiley & Rein as a partner.
- 1989** Fielding is a member of the president's Commission on Federal Ethics Law Reform.
- 1989-1994** Fielding is an arbitrator at the Tribunal on the U.S.-U.K. Air Treaty Dispute.
- 1997-1998** Fielding serves on the secretary of transportation's Task Force on Aviation Disasters.
- 2002**
- December* On the 15th, Fielding is named to the National Commission on Terrorist Attacks upon the United States (9/11 Commission). (*The Washington Post*, 12/16/2002)
- 2003**
- October* Some families of 9/11 victims write a letter to the 9/11 Commission challenging Executive Director Philip Zelikow's objectivity in investigating the Bush White House. Commission co-chairs Thomas H. Kean and Lee Hamilton reject any suggestions of partiality or conflict of interest, and they assert that Zelikow's relationship with the Bush Administration has been satisfactorily disclosed. (*The Washington Post*, 10/15/2003)

November Zelikow brokers a deal to allow the 9/11 Commission access to the president's Daily Briefing (PDB) after the White House insists on omitting material unrelated to 9/11. (*The New York Times*, 11/14/2003)

2004

March On the 24th, White House Counsel Alberto Gonzales reportedly phones Fielding prior to Counterterrorism Chief Richard Clarke's testimony before the commission. Clarke charges that the Bush Administration was not concerned about his warnings of an al-Qaeda attack. During Clarke's testimony, Fielding is critical of some of Clarke's discrepancies from earlier congressional testimony. (Thomas Kean and Lee Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission*, New York: Vintage Books, 2006, p. 166; *The Washington Post*, 04/01/2004)

April On the 8th, National Security Advisor Condoleezza Rice testifies before the 9/11 Commission. Fielding voices his concern about the lack of coordination among federal agencies. (*The Washington Post*, 04/09/2004)

July On the 22nd, the 9/11 Commission Report is published. Many 9/11 victims' families see the report as a triumph having fought for the commission's creation. The Bush Administration will later adopt many of its recommendations. Critics claim that the report does not identify anyone to blame, and they charge that it is not thorough enough. (*The New York Times*, 07/23/2004)

2007

January George W. Bush appoints Fielding as White House counsel to succeed Harriet Miers. (*The Washington Post*, 01/9/2007)

On the 16th, the month-long trial of Vice President Dick Cheney's aide I. Lewis (Scooter) Libby begins. Libby stands accused of lying to investigators about revealing the secret identity of CIA agent Valerie Plame. ("Lewis 'Scooter' Libby Goes to Court," *NPR*, 01/15/2007)

March Libby is found guilty on four of five counts of obstructing justice. (*The Washington Post*, 03/07/2007)

Amid controversy regarding the dismissal of eight U.S. attorneys, Fielding meets with Republican members of Congress over the role of Attorney General Gonzales, Fielding's predecessor, in the dismissals. (*Roll Call*, 03/15/2007)

Pressed by the Senate Judiciary Committee to send documents relating to the firing controversy, Fielding insists that he needs more time to release the papers and "to produce Mr. [Karl] Rove, former White House counsel Harriet Miers and other officials." (*The Globe and Mail-Canada*, 03/17/2007)

Fielding agrees that Rove, Miers, and others can be interviewed by members of Congress, provided the hearings remain private and not under oath, due to concerns over executive privilege. Senate Judiciary Committee Chairman Patrick Leahy (D-VT) rejects the offer. (*New York Daily News*, 03/21/2007)

On the 21st, a House Judiciary Subcommittee approves the issuance of legal orders for Rove, Miers, and other White House officials to testify under oath. The following day, the Senate Judiciary Committee authorizes subpoenas for Rove and Miers. (*The Christian Science Monitor*, 03/22/2007; *The Washington Times*, 03/23/2007)

On the 22nd, Senator Arlen Specter (R-PA) suggests to Fielding that Congress question Rove and others in public, but not under oath. Fielding remains non-committal about the offer. (*The Washington Times*, 03/23/2007)

April In an op-ed piece on Fielding in *The Washington Post*, Ruth Marcus criticizes his approach to the issue of congressional testimony and executive privilege. (*The Washington Post*, 04/11/2007)

Rep. Henry Waxman (D-CA), chair of the House and Oversight and Government Reform Committee, reportedly becomes concerned when he sees former White House Chief of Staff Andrew Card discussing the Valerie Plame case on “The Daily Show” with Jon Stewart. Earlier Waxman had requested that Card appear before his committee, and Fielding responded that Card’s appearance before the oversight committee would violate longstanding executive branch policy prohibiting current and former White House officials from congressional testimony. Waxman strongly disagrees, referencing three previous appearances by President William Clinton’s chiefs of staff before Congress. (*The Boston Globe*, 04/21/2007)

May *The Washington Times* reports that on the 28th, Fielding is one of six recipients of an e-mail from Scott Jennings, Karl Rove’s deputy, regarding David Iglesias, the former U.S. attorney from New Mexico, fired in 2006. In the message, Jennings warns that this may be escalating into a long-term news story. (*The Washington Times*, 05/17/2007)

June Fielding sends a letter to Democrats in Congress stating, “It is the hope that the committees will not feel compelled to elevate the stakes by pursuing the path of subpoenas and compulsory process referred to in your recent letters, which will only prolong this debate.” Nonetheless, the House Judiciary Committee subpoenas White House Chief of Staff Joshua Bolten and Miers. (*The Irish Times*, 06/15/2007)

On the 28th, Fielding announces that the White House will not hand over documents from Miers and former political director Sara Taylor to the House and

Senate Judiciary Committees. In a letter to congressional Democrats, he writes, “We had hoped this matter could conclude with your committees receiving information in lieu of having to invoke executive privilege. Instead, we are at this conclusion.” (*New York Daily News*, 06/29/2007)

July

On the 2nd, the White House announces Bush’s decision to commute Libby’s 30-month sentence for perjury and obstruction. (*The New York Times*, 07/03/2007)

W. Neil Eggleston, Sara Taylor’s attorney, reportedly writes a letter to congressional leaders notifying them that he expects Fielding to ask Taylor not to comply with the subpoenas. He states, “Absent the direction from the White House, Ms. Taylor would testify without hesitation before the Senate Judiciary Committee....” (<http://www.chinadaily.com.cn>, 07/09/2007)

On the 9th, Fielding writes Leahy refusing to list the documents that the White House is withholding from Congress. He asserts, “We are aware of no authority by which a congressional committee may ‘direct’ the executive to undertake the task of creating and providing an extensive description of every document covered by an assertion of executive privilege.” (*The Irish Times*, 07/10/2007)

On the 11th, Taylor testifies before the Senate Judiciary Committee. She references Fielding’s directive not to provide information on “White House consideration, deliberation, communications, whether internal or external,” and proceeds to invoke Fielding’s name 24 times and his letter 35 times. (*The Washington Post*, 07/12/2007)

On the 16th, *Newsweek* publishes an article analyzing Bush’s decisions to reduce Libby’s sentence. According to the article, Bush assigned Fielding to collect information on the case. Fielding had “reluctantly concluded that the jury had reached a reasonable verdict: the evidence was strong that Libby testified falsely about his role in the leak.” (*Newsweek*, 07/16/2007)

On the 18th, *The Washington Post* publishes a profile on Fielding, citing his longstanding reputation as a pragmatic compromiser. It concludes that Fielding may have chosen confrontation with Congress over executive privilege as a way to “run out the clock” on the Bush administration’s time in office. (*The Washington Post*, 07/18/2007)

On the 25th, the House Judiciary Committee votes 22 to 17, along party lines, to cite Bolten and Miers for contempt of Congress. (*New York Daily News*, 07/26/2007)

August

Fielding sends a letter to the Senate Judiciary Committee, informing them that Bush is asserting executive privilege to block testimony by Rove and Jennings before Congress. Fielding states, “Mr. Rove, as an immediate presidential advisor, is immune from compelled congressional testimony about matters that arose

during his tenure and that relate to his official duties in that capacity.” (*The Toronto Star*, 8/2/2007; *The Irish Times*, 08/03/2007)

On the 20th, Leahy subpoenas the National Security Agency, the National Security Council, and the offices of the president and vice president for papers concerning the temporary revision of the Foreign Intelligence Surveillance Act (FISA) that allows eavesdropping on foreign communications without the approval of a FISA court. Leahy wants to ascertain the legal foundation of the eavesdropping program. Fielding responds by asking for more time and noting that the White House has identified a “core set” of papers that will likely be withheld under a claim of executive privilege. (*The Christian Science Monitor*, 08/22/2007)

On the 27th, Attorney General Gonzales resigns. Bolten, Fielding, and Counselor to the President Ed Gillespie reportedly support his departure. (*New York Daily News*, 08/28/2007)

September In the wake of Gonzales’ departure from the Administration, *USA Today* reports that Fielding headed the search team for the appointment of the new attorney-general, ultimately recommending Michael Mukasey. (*USA Today*, 09/18/2007)

November On the 5th, House Judiciary Committee Chairman John Conyers Jr. (D-MI) complains that his previous eight attempts to reach agreement on White House testimony, concerning the firing of U.S. attorneys have not been met in good faith. He announces that Fielding must turn over documents immediately or face contempt of Congress. (*The Washington Times*, 11/06/2007)

2008

February Congress passes the Sudan Accountability and Divestment Act, which seeks to ease restrictions on local and state divestments from companies with business ties to Sudan. Bush comes under criticism for saying the law might interfere with his ability to conduct national foreign policy. Fielding declines to testify in Congress about his legal advice to Bush regarding the matter. (*The Boston Globe*, 02/09/2008)

December Bush revokes a presidential pardon for Isaac Robert Toussie after reports of monetary contributions by his father to the Republican Party surface. White House press secretary Dana Perino states that neither Bush nor Fielding, who had approved the pardon, knew of these donations. (*The Washington Post*, 12/25/2008; *New York Daily News*, 12/25/2008)

2009

January A *Washington Post* article on presidential pardons contends that Fielding, who had approved Toussie’s pardon, had not “bother[ed] with the customary Justice Department review” before doing so. (*The Washington Post*, 01/14/2009)

Prior to President-Elect Barack Obama's inauguration, Fielding works with White House Counsel-designate Gregory Craig to brief him on the responsibilities of the office. He also sends letters to the lawyers of Rove and Miers, notifying them that executive privilege still shields them from having to testify before Congress about their work at the White House. (*Legal Times*, 02/02/2009)

March Attorneys for Bush, Congress, and Obama reach an agreement to end a long dispute over the scope of executive privilege. The deal will have Rove and Miers testify under oath before the House Judiciary Committee, but no recordings or outside observers will be permitted. However, the interviews will be transcribed and eventually published. (*The Washington Post*, 03/05/2009)

April Fielding becomes a partner at the firm of Morgan & Lewis.
(<http://www.morganlewis.com>)

2010

July On the 21st, the Justice Department announces it has found no evidence of any wrongdoing in the U.S. attorney firings. (*The Washington Post*, 07/22/2010)

TIMELINES

- Fred F. Fielding News Timeline, prepared by Victor V. Nemchenok, Miller Center, University of Virginia, 05/14/2010.
- Timeline of the Bush Presidency, prepared by Justin Peck and Bryan Craig, Miller Center, University of Virginia, 04/30/2010.

SELECTED WRITINGS AND PUBLIC STATEMENTS BY FRED F. FIELDING

- Fred F. Fielding, “He Was a Terrific Client,” *Legal Times*, 06/14/2004.
- *The 9/11 Commission Report: Executive Summary*, < http://www.9-11commission.gov/report/911Report_Exec.pdf> (01/27/2011).

WHITE HOUSE COUNSEL

- Bradley H. Patterson, “The ‘Just-Us’ Department: The Counsel to the President,” in *To Serve the President: Continuity and Innovation in the White House Staff* (Washington, DC: Brookings Institution Press, 2008) pp. 66-81.
- Peter Baker, “Bush Picks Reagan White House Counsel Fielding to Succeed Miers,” *The Washington Post*, 01/09/2007.
- Deb Riechmann, “Lawyer Back at White House Decades After Helping Reagan,” *The Boston Globe*, 02/23/2007.
- Ruth Marcus, “Calling Fred Fielding,” *The Washington Post*, 04/11/2007.

KEY ISSUES AND EVENTS AS WHITE HOUSE COUNSEL

U.S. Attorneys Controversy

- Allegra Hartley, "Timeline: How the U.S. Attorneys Were Fired," *U.S. News and World Report*, 03/21/2007.
- Keith Perine and Seth Stern, "Subpoenas for Bush Officials Authorized," *CQ Weekly*, 03/26/2007.
- Keith Perine and Seth Stern, "Testimony Fans U.S. Attorney Firings," *CQ Weekly*, 04/02/2007.
- Seth Stern, "Missing E-Mails Add New Heat to Impending Gonzales Testimony," *CQ Weekly*, 04/16/2007.
- Seth Stern, "Former Justice Official Calls Prosecutors' Firings Unwarranted," *CQ Weekly*, 05/07/2007.
- Michael A. Fletcher, "A Reputation for Compromise," *The Washington Post*, 07/18/2007.
- Keith Perine, "White House Digs In Over Subpoenas," *CQ Weekly*, 07/09/2007.
- Keith Perine, "Panel Votes for Contempt Citations," *CQ Weekly*, 07/30/2007.
- Jerry Seper, "White House Counsel Dealt Threat of Contempt," *The Washington Times*, 11/06/2007.

Wiretapping

- Peter Grier, "New Misgivings on Wiretap Law," *The Christian Science Monitor*, 08/22/2007.

Plame Affair

- Michael Isikoff, "Friends in High Places: Inside Bush's Decision to Give Scooter Libby a Pass," *Newsweek*, 07/16/2007.

FRED F. FIELDING SUGGESTED TOPICS

Prepared by Victor V. Nemchenok

Miller Center, University of Virginia, 01/11/2010

Early Relationship with Bush

- When did you first meet George W. Bush? What were your early impressions of him?

9/11 Commission and the Bush Administration

- Discuss your selection as a commissioner on the 9/11 Commission.
- Discuss the work of the Commission and the dynamics among the executive director and commissioners, among the commissioners and the staff, and between the Commission and the administration.
- In what ways and how well did the Bush administration work with the commission in gathering information? Detail your negotiations, if any, with the White House regarding executive privilege and getting administration officials to testify.
- Were there aspects of the report that did not get attention from the press or policymakers? Were things omitted from the final report that you believed merited inclusion?
- How effectively did the Bush administration implement the report's recommendations?
- Did your role on the 9/11 Commission in any way affect your relationships with officials in the Bush White House?

White House Counsel

- Describe the circumstances leading to your appointment as White House counsel. Did you have any discussions with the President or anyone else about what was expected from you in this role? Contrast the two different circumstances under which you became White House counsel, for President Reagan (at the beginning of an administration), and succeeding a controversial counsel for President Bush.
- Describe your role and responsibilities as White House counsel. Describe any conversations with Bush about the role of the counsel's office.
- How much control did you have in staffing the counsel's office? Compare the Bush White House counsel staff to the Reagan counsel staff, which included John Roberts and Michael Luttig.
- Did you make any changes to the organization or operation of the counsel's office after your arrival? What were the priorities of the counsel's office?
- What issues and investigations occupied most of your time?
- With whom did you work most closely at the White House? How closely did you work with President Bush?
- Discuss your relationship with other legal policymakers in the administration.
- Discuss your interactions with members of Congress and its investigative committees.
- Some have characterized the work of the counsel's office as being more defensive than offensive? Would you agree with that description in terms of your tenure as White House counsel?
- What role did you and your staff play in reviewing presidential speeches, legislation (proposed language, signing statements, enrolled bills, etc.), executive orders, and pardons? Do any instances of review stand out in your mind?

- Describe the process of finding a replacement for Alberto Gonzales as attorney general.
- How active was the White House counsel's office under your tenure in shaping the doctrine of executive privilege?
- Discuss your press relations as White House counsel.
- Compare your experiences with the Nixon, Reagan, and George W. Bush administrations. How have the duties of the office evolved?
- Discuss your relationship with the Office of Legal Counsel and whether you had any involvement in efforts to reverse OLC opinions issued during the first Bush term.

George W. Bush Presidency in Retrospect

- Evaluate Bush as a public leader, a legislative leader, and party leader. How does his leadership style compare to those of Richard Nixon and Ronald Reagan?
- How did Bush respond to adversity and setbacks?
- What were the strengths and weaknesses of the Bush presidency?
- How should the Bush presidency be viewed by posterity? What aspects of the presidency did the press overlook or misunderstand?