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VIA FAX

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

Dear Chairman Conyers:

Contrary to your letter of May 14, 2008, I do not misunderstand either the Committee's procedures or the scope of its interest in Mr. Rove; nor, in light of your reported remarks about the need for "someone" to "kick his ass," am I the least bit confused about the Committee's motives and intentions. I confess, however, that I do not understand why the Committee is threatening a subpoena to Mr. Rove for information related to the alleged "politicization of the Department of Justice," when, as the Committee is surely aware, Mr. Rove has already received a subpoena for the same subject matter from the Senate Judiciary Committee. I do not understand why the Committee insists on provoking a gratuitous confrontation while the issues raised by the Committee's request are being litigated in U.S. District Court or why the Committee refuses to consider a reasonable accommodation.

I also do not understand why the Committee refuses to acknowledge that, in these matters, Mr. Rove is not a free agent. As I have made clear in two letters to the Committee, and as the White House has repeatedly emphasized in communications with the Committee and in court, the decision about when, where, and what a former assistant to the President may testify about raises issues of Executive Privilege and separation of powers that Mr. Rove does not control. Your letters continue to reflect the misapprehension that the positions we have asserted are personal in nature, even though we have told you repeatedly that Mr. Rove will not invoke any personal privileges in response to a subpoena, but that, as to matters related to his former employment, he is absolutely obligated to follow the direction of the President of the United States.

Your letter of May 14 draws attention to the fact that Mr. Rove has publicly denied any involvement in the prosecution of Gov. Siegelman or that he behaved improperly concerning the firing of U.S. Attorneys. There is no legal doctrine that stands for the proposition that Mr. Rove must stand silent in the face of false accusations or that his general denial of wrongdoing vitiates a privilege held by others. In analogous circumstances, Members of Congress have seen no inconsistency whatsoever in publicly denying personal wrongdoing, while simultaneously relying on the testimonial protections afforded by the Speech or Debate Clause of the Constitution.

As to the Committee's concerns about the prosecution of Gov. Siegelman, we have offered two alternatives designed to address the Committee's interest in factfinding. While we readily acknowledge that neither proposal is perfect, they fairly accommodate the interests of the Committee, while preserving the limits imposed on Mr. Rove by the White House. While the Committee has the authority to issue a subpoena, it is hard to see what this will accomplish, apart from a Groundhog Day replay of the same issues that are already the subject of litigation. Such an approach would unfairly burden Mr. Rove, while bringing no one – not the Committee, the White House, or Mr. Rove – a step closer to a resolution.

As we have from start, we remain available to discuss these matters with the Committee or its Staff at any time.

Yours sincerely,

Robert D. Luskin

Copy: Honorable Linda T. Sanchez
Honorable Tammy Baldwin
Honorable Artur Davis
Elliot Mincberg, Esq.