

White House rebuffs congressional subpoenas, escalating confrontation over attorney purge and domestic spying

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Developments over the past two days have intensified the confrontation between the Bush White House and the Democratic-controlled Congress over the administration's domestic spying operations and its politically motivated ouster of nine US attorneys.

On Thursday, the White House refused to comply with subpoenas issued June 13 by the House and Senate judiciary committees demanding that it turn over documents concerning its involvement in the 2006 purge of federal prosecutors.

Invoking executive privilege, White House Counsel Fred Fielding sent letters to the Democratic chairmen of the two committees that have been investigating the firings for the past five months, Rep. John Conyers of Michigan and Sen. Patrick Leahy of Vermont, saying the documents would not be furnished, and that two former senior White House aides ordered to testify before the committees would not appear.

Conyers had called on Harriet Miers, the former White House counsel, to testify before the House Judiciary Committee on July 12. Leahy had ordered Sara Taylor, until recently Bush's political director and deputy to White House political strategist Karl Rove, to appear before the Senate committee on July 11. Thursday was the deadline set by the subpoenas for the White House to turn over the requested documents.

The previous day, the Senate Judiciary Committee issued subpoenas to the White House, the office of Vice President Dick Cheney, the Justice Department and the National Security Council, a White House agency, ordering them to turn over documents concerning the legal justification for the National Security Agency's domestic spying program that was secretly authorized by Bush shortly after 9/11 and first revealed to the public in newspaper accounts published in December of 2005.

The subpoenas also demanded records relating to disputes within the administration over the legality of the program, which flatly violated the 1978 Foreign Intelligence Security Act requiring court-issued warrants for domestic wiretapping and surveillance activities.

The administration's refusal to comply with the subpoenas on the US attorney purge leaves little doubt that it will similarly defy the Senate committee's subpoenas concerning the domestic spying program. The deadline for those documents to be handed over is July 18.

The standoff on the subpoenas sets the stage for a possible constitutional confrontation between the executive and legislative branches of the government. The next step in the

process would be congressional votes to cite the officials named in the subpoenas for contempt of Congress, followed by litigation in the federal courts, up to and including the US Supreme Court.

The Democrats had held off issuing subpoenas in the US attorney investigation for months, hoping to avert a direct confrontation with the White House. This was despite voluminous testimony before the committees as well as information in thousands of pages of documents provided by the Justice Department and statements from fired US attorneys showing that the purge of federal prosecutors was aimed at ousting those who had prosecuted Republican officials on corruption charges or had resisted launching criminal investigations against Democratic candidates and Democratic-linked voter registration organizations.

In several cases, the fired federal prosecutors were replaced with Bush loyalists who issued indictments based on trumped-up voter fraud charges against Democratic candidates and voter registration groups during the 2006 election campaign, or pressured state governments to purge voter rolls of poor and minority voters likely to vote Democratic. Evidence has emerged that these efforts were part of a wide-ranging scheme orchestrated by Karl Rove to pack the US attorney system so as to manipulate the 2008 presidential election.

Both Miers and Talyor have been implicated in this abuse of the electoral process, and congressional testimony has established that Bush was directly involved in discussions on the firings.

In addition, Attorney General Alberto Gonzales, a long-time Bush acolyte, has been repeatedly caught making false and misleading statements, some of them under oath, about his own role. Democratic and some Republican congressmen have called for Gonzales to resign, but Bush has repeatedly declared his confidence in the attorney general and Gonzales has refused to step down.

The fact that the Democrats have adopted a more aggressive posture in both the US attorney scandal and the domestic spying program, about which they said nothing for months, must be attributed primarily to growing concerns within the US ruling elite and the Republican Party itself over the disastrous results of the Bush administration's war policy in Iraq and the domestic political implications of the Iraq debacle.

In his letter to Leahy and Conyers, White House Counsel Fielding wrote, "Presidents would not be able to fulfill their responsibilities if their advisors on fear of being commanded to Capitol Hill to testify or having their documents produced to Congress were reluctant to communicate openly and honestly in the course of rendering advice and reaching decisions."

This assertion of presidential confidentiality is highly ironic, given the insistence of the Republican Congress in 1998 and 1999 that President Bill Clinton allow his closest aides to testify about their confidential discussions with the president in the course of the Kenneth Starr investigation into the concocted Whitewater scandal and the subsequent Monica Lewinsky affair. Then all claims of executive privilege were brushed aside, in order to carry out a right-wing conspiracy to destabilize and even remove an elected president from office.

In the Lewinsky affair, which became the basis for Clinton's impeachment, the issue was a private relationship having no bearing on the president's official duties. The current

scandals, on the other hand, involve the most far-reaching attacks on democratic rights, organized from the White House and the office of the vice president.

Fielding repeated the administration's derisory offer to settle the dispute over congressional access to White House documents and personnel. The White House has proposed that instead of its officials testifying publicly and under oath, they would agree to closed-door interviews with congressional aides, not under oath and without any transcripts of the proceedings.

Last April, Sen. Charles Schumer, the Democratic Judiciary Committee member who has been leading the committee's investigation into the US attorney purge, offered to accept this "compromise," with the proviso that transcripts be kept of the secret interviews. The White House quickly rebuffed the offer.

In response to Fielding's letter, members of the House and Senate committees attacked the administration for holding itself above the law and compared its position to President Nixon's stonewalling in the Watergate scandal.

In a prepared statement, Conyers said that Bush showed "an appalling disregard for the right of the people to know what is going on in their government." He continued: "The executive privilege assertion indicates the reckless disrespect this administration has for the rule of law.

"The charges alleged in this investigation are serious—including obstruction of justice and misleading Congress.... At this point, I see only one choice in moving forward, and that is to enforce the rule of law set forth in these subpoenas."

Leahy called the invocation of executive privilege "a further shift by the Bush administration into Nixonian stonewalling and more evidence of their disdain for our system of checks and balances."

He continued: "The president and vice president feel they are above the law.... The investigation has revealed, however, that Ms. Miers and Ms. Taylor, among others at the White House, helped orchestrate the effort to oust the prosecutors, despite an early statement from the White House denying that they played any roles."

He vowed to move "at the appropriate time" with a contempt notice.

It is significant that Democratic spokesmen are alleging illegal acts in connection with the US attorney purge. In 1974, the US Supreme Court rejected Nixon's assertion of executive privilege and ordered him to turn over the White House tapes on the grounds that executive privilege cannot be invoked in relation to a criminal investigation.

On Wednesday, White House spokesman Tony Snow reacted to the subpoenas on the warrantless wiretapping program by calling them "outrageous."

Democrats on the Senate Judiciary Committee began requesting documents concerning the program from the White House only after James Comey, a former deputy attorney general in the Bush administration, testified last month that then-Attorney General John Ashcroft and FBI Director Robert Mueller refused to recertify the program in 2004 because they considered it illegal.

Comey described how Gonzales, then Bush's White House counsel, and Bush's Chief of Staff Andrew Card intruded into Ashcroft's hospital room when the attorney general was barely conscious, having undergone a serious operation, in an attempt to get him to reverse his opposition to recertifying the program. Comey intervened and foiled the late-night raid by Bush's agents. When Bush went ahead and unilaterally recertified the program—whose parameters were likely far broader than those subsequently admitted to by Bush—Comey, Ashcroft and Mueller said they would resign in protest.

Bush ultimately agreed to make some undisclosed changes, and the three officials agreed to stay on and recertify the program.

The White House has rebuffed all requests from the Senate Judiciary Committee for documents relating to the NSA domestic spying program.

Comey's testimony was an indication of the deepening atmosphere of crisis surrounding the Bush administration and of growing divisions within the Republican ranks, including within the administration itself. Since then, there have been further signs of dissent and suggestions that elements within the political and foreign policy establishment are considering ways of reigning in the Bush administration, shifting its tactics in Iraq and elsewhere, and even effecting major personnel changes.

On Monday, Sen. Richard Lugar, the ranking Republican on the Senate Foreign Relations Committee, demonstratively broke ranks with the administration on its policy in Iraq. Speaking in the well of the Senate, Lugar said Bush's military "surge" in Iraq was doomed to failure, and argued that US foreign policy interests as well as domestic political stability were being undermined by the current course.

He called for a diminished military profile in Iraq, to be maintained for an indefinite period, to secure vital American interests, above all oil, and appealed for Democrats to join in forging a bipartisan consensus for a new strategy to avert a defeat and salvage the basic aims of the invasion and occupation of the country.

Lugar's intervention coincides with increasingly public criticisms in the media of the role of Vice President Cheney, the figure in the administration most closely associated with its war policy in Iraq and the violations of international law carried out in the name of the "war on terror," including secret prisons, abductions, the use of torture and the denial of habeas corpus and due process rights for alleged terrorist detainees.

Cheney is evidently being targeted by figures within the political establishment and the Republican Party itself as the main obstacle to affecting a shift in policy along the lines suggested by Lugar.

This week saw the publication by the *Washington Post* of a four-part series exposing Cheney's secretive methods and his dominant role in setting policy for the Bush administration. On Tuesday, the *Post* published a column by longtime Washington commentator Sally Quinn entitled "A GOP Plan to Oust Cheney."

It begins: "The big question right now among Republicans is how to remove Vice President Cheney from office. Even before this week's blockbuster series in the *Post*, discontent in Republican ranks was rising.

"As the reputed architect of the war in Iraq, Cheney is viewed as toxic, and as the

administration's leading proponent of an attack on Iran, he is seen as dangerous. As long as he remains vice president, according to this thinking, he has the potential to drag down every member of the party—including the presidential nominee—in next year's elections."

Quinn goes on to suggest that there is a move afoot to move Cheney out when he undergoes scheduled surgery to replace his pacemaker later this summer, on the grounds of ill health, and replace him with Fred Thompson, the former Tennessee senator, actor and unannounced candidate for the 2008 Republican presidential nomination.

Thompson, she writes, would immediately "give the Republicans a platform" and become the clear Republican choice to run for president.

Whether or not such a scenario unfolds, the very fact that it is so openly broached testifies to the sense of crisis engulfing not only the Republican Party, but the entire political establishment. In issuing its subpoenas, the congressional Democrats are no doubt responding to signals and assurances from the top echelons of the corporate and political establishment, and doing their bit to effect a course correction that will not seriously alter the current policies of militarism and social reaction, but will, it is hoped, avert a disaster for US imperialism abroad and a political and social upheaval at home.

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