

George W. Bush Presidential Library

Collection: Counsel's Office, White House

Series: Kavanaugh, Brett - Subject Files

Folder Title: Testimony by Ridge: White
House Policy on Testifying Before Congress

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Senate Request for Gov. Ridge's Testimony - To: Aleberto Gonzales, et al. - From: Edward McNally	1	03/04/2002	P5;
002	Letter	[Letter] - To: Arthur Culvahouse - From: C. Boyden Gray	1	06/17/1992	P5;
003	Memorandum	Memorandum [with attachment] - To: File - From: Michale Small	29	04/29/1994	P5;
004	Letter	[Letter] - To: Arthur Culvahouse - From: C. Boyden Gray	1	06/17/1992	P5;
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COLLECTION TITLE:

Counsel's Office, White House

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Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Testimony by Ridge: White House Policy on Testifying Before Congress

FRC ID:

9696

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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FRC ID:

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OA Num.:

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

March 4, 2002

TERRANCE E. SAUVAIN, STAFF DIRECTOR
 STEVEN J. COMITTE, MINORITY STAFF DIRECTOR

The Honorable Tom Ridge
 Assistant to the President for Homeland Security
 Executive Office of the President
 The White House
 Washington, DC 20502

Dear Governor Ridge:

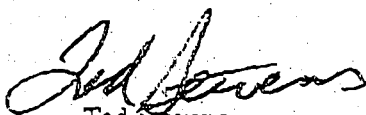
In Securing the Homeland Strengthening the Nation, President Bush concludes that, "the threat of terrorism is an inescapable reality of life in the 21st Century. It is a permanent condition to which America and the entire world must adjust." We share the view that it is essential that Federal, state, and local governments must have a significant and sustained commitment to defend our homeland.

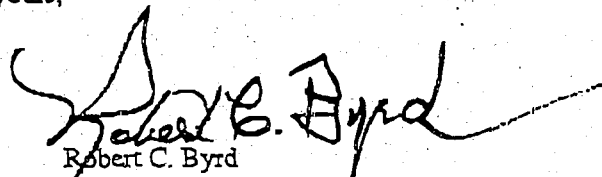
The Senate Appropriations Committee will be holding a series of hearings to examine closely the Federal response here at home to the events of September 11, 2001. The President's Budget for Fiscal Year 2003 includes requests for homeland defense funding in dozens of departments and agencies. In the Executive Order establishing the Office of Homeland Security, President Bush gives you the responsibility to certify that the funding levels contained in the Budget transmitted to the Congress are necessary and appropriate for the homeland security-related activities of the Executive Branch.

Therefore, you are the single Executive Branch official with the responsibility to integrate the many complex functions of the various Federal agencies in the formulation and execution of homeland defense programs. Your views and insights on the policies necessary to meet these objectives are critical to the Committee and the nation. As Chairman and Ranking Member of the Committee, we request that you testify before the Committee on April 9th, April 10th, or April 11th, 2002. The subcommittees of this Committee will address the detailed funding requests for the individual agencies and departments.

Thank you for your attention to this matter. We look forward to your early and positive response.

Sincerely yours,


 Ted Stevens
 Ranking Member


 Robert C. Byrd
 Chairman

RCB/TS:cek

THE WHITE HOUSE
WASHINGTON

June 16, 1992

Dear Mr. Chairman:

I am writing in response to your letter of June 11 to the President regarding your June 23 scheduled hearing. In that letter, you invited the Administration to send appropriate Administration officials to testify. We would propose to send Mr. Robert Mueller, Assistant Attorney General, Criminal Division, Department of Justice, and Mr. Laurence Urgenson, Acting Deputy Assistant Attorney General, Criminal Division, Department of Justice. In addition, I would note that the Administration has previously testified in great detail regarding pre-Desert Storm Iraq policy, the administration of the relevant programs and related investigations. I attach a copy of this testimony and ask that it be made available to all Committee Members before the hearing.

Your letter also requested the appearance of Mr. Nicholas Rostov, Special Assistant to the President and Senior Director for Legal Affairs, National Security Council; and Mr. C. Boyden Gray, Counsel to the President. As I advised the Chairman of the Committee on Banking, Finance and Urban Affairs in response to a similar request, it is the longstanding practice of the Executive Branch to decline requests for testimony by members of the President's personal staff. For that reason, I must decline your request for personal testimony by Messrs. Gray and Rostov. In light of the unusual circumstances presented here, however, the Administration is prepared to work with you to develop an alternative, mutually acceptable mechanism for making available to Members of the Committee the White House officials whose testimony you have sought.

Finally, attached to your letter was a request for documents from the Department of Agriculture, the State Department, the Department of Justice, the White House, the Department of the Treasury/U.S. Customs Service, and the Department of Commerce. In order to expedite a response to that request, we have forwarded it to the listed Departments outside the White House, and have directed them to respond directly to the Committee. In light of the large number of documents requested, it is unlikely that they or the White House will be able to meet the June 18

response date, but we have requested that they respond as quickly as possible.

Sincerely,

Nicholas E. Calio

Nicholas E. Calio
Assistant to the President for
Legislative Affairs

Chairman Jack Brooks
Committee on the Judiciary
House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6218

cc: The Honorable Hamilton Fish, Jr.

attachments

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9696

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

March 4, 2002

MEMORANDUM TO JUDGE ALBERTO GONZALES
TIM FLANIGAN

CC: ADM. STEVE ABBOT, MARK HOLMAN, DAVID
ADDINGTON, BRETT KAVANAUGH

FROM: EDWARD McNALLY *EM*

SUBJECT: SENATE REQUEST FOR GOV. RIDGE'S TESTIMONY

Attached for your information and review is a copy of today's letter to Governor Ridge from Senators Robert Byrd and Ted Stevens of the Senate Appropriations Committee concerning the forthcoming "series of hearings" to "examine closely the Federal response here at home" to the events of September 11th. The letter states:

"As Chairman and Ranking Member of the Committee, we request that you testify before the Committee on April 9th, April 10th, or April 11th, 2002."

Last week I provided you with copies of the 1999 memorandum by the Attorney General which concluded, among other issues, that the Counsel to the President, e.g., was immune from a subpoena to testify. By way of additional background, also attached here are copies of a set of June 1992 letters from Nick Calio and Boyden Gray concerning requests for testimony by Nick Rostow (who then held John Bellinger's position) and Boyden Gray (the Administration declined), and also regarding former presidential Chief of Staff Howard Baker. Also included is a memorandum prepared by OLC in 1994 concerning "Congressional Requests for Testimony of White House Officials", which provides a detailed history of how various administrations have addressed these issues during the past 50 years. I am available to discuss these matters at any time that is convenient to you.

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

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United States Senate

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 WASHINGTON, DC 20510-6025

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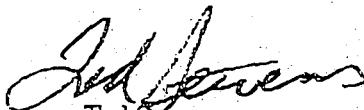
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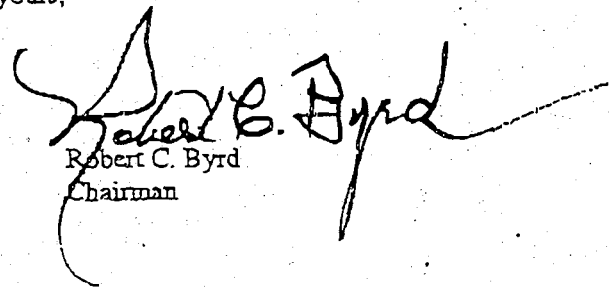
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Assistant to the President for
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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.

IMMUNITY OF THE COUNCIL TO THE PRESIDENT FROM COMPELLED CONGRESSIONAL TESTIMONY

Executive privilege is assertable in response to a congressional subpoena seeking the testimony of the Counsel to the President because the Counsel serves as one of the President's immediate advisers and is therefore immune from compelled congressional testimony.

September 3, 1996

LETTER OPINION FOR THE COUNSEL TO THE PRESIDENT

You have asked whether it would be consistent with precedent and governing legal principles to assert executive privilege should a subpoena be issued by a congressional committee to you, in your capacity as Counsel to the President, to compel your testimony at a committee hearing concerning the performance of your official duties. We believe that executive privilege would be assertable on the basis that you serve as an immediate adviser to the President and are therefore immune from compelled congressional testimony.

It is the longstanding position of the executive branch that "the President and his immediate advisors are absolutely immune from testimonial compulsion by a Congressional committee."⁽¹⁾ This position is constitutionally based:

The President is a separate branch of government. He may not compel congressmen to appear before him. As a matter of separation of powers, Congress may not compel him to appear before it. The President's close advisors are an extension of the President.⁽²⁾

Accordingly, "[n]ot only can the President invoke executive privilege to protect [his personal staff] from the necessity of answering questions posed by a congressional committee, but he can also direct them not even to appear before the committee."⁽³⁾

An often-quoted statement of this position is contained in an opinion by Assistant Attorney General William Rehnquist:

The President and his immediate advisers -- that is, those who customarily meet with the President on a regular or frequent basis -- should be deemed absolutely immune from testimonial compulsion by a congressional committee. They not only may not be examined with respect to their official duties, but they may not even be compelled to appear before a congressional committee.⁽⁴⁾

There is no question that the Counsel to the President falls within Assistant Attorney General Rehnquist's description of the type of Presidential advisers who are immune from testimonial compulsion.

CHRISTOPHER H. SCHROEDER
Acting Assistant Attorney General
Office of Legal Counsel

1. Memorandum for all Heads of Offices, Divisions, Bureaus and Boards of the Department of Justice, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, Re: Executive Privilege at 5 (May 23, 1977).

2. Memorandum for Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel at 2 (Jul. 29, 1982) (discussing subpoena for testimony of the Counsel to the President). See also Memorandum for the Honorable John W. Dean, III, Counsel to the President, from Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, Re: Availability of Executive Privilege Where Congressional Committee Seeks Testimony of Former White House Official on Advice Given President on Official Matters at 6 (Dec. 21, 1972) (since "[a]n immediate assistant to the President may be said to serve as his alter ego . . . the same considerations that were persuasive to former President Truman [when he declined to comply with a congressional subpoena for his testimony] would apply to justify a refusal to appear by . . . a former staff member"); Letter for Senator Orrin G. Hatch, Chairman, United States Senate, Committee on Labor and Human Resources and Senator Edward M. Kennedy, Ranking Minority Member, United States Senate, Committee on Labor and Human Resources, from Edward C. Schmults, Deputy Attorney General at 2 (Apr. 19, 1983) ("[O]ur concern regarding your desire for the sworn testimony of [the Counsel to the President] is based upon important principles relative to the powers, duties and prerogatives of the Presidency. We share with previous Presidents and their advisers serious reservations regarding the implications for established constitutional doctrines arising from the separation of powers of a Congressional demand for the sworn testimony of close presidential advisers on the White House staff.").

3. Memorandum for Margaret McKenna, Deputy Counsel to the President, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, Re: Dual-purpose Presidential Advisers, Appendix at 7 (Aug. 11, 1977).

4. Memorandum for the Honorable John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff" at 7 (Feb. 5, 1971).