US Congressional committee approves contempt citations against White House aides

Joe Kay
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The House of Representatives Judiciary Committee voted Wednesday to find one current and one former Bush White House aide in contempt of Congress for refusing to answer subpoenas in the investigation into the 2006 firing of nine US attorneys.

By a party-line vote of 22-17, the committee voted to approve contempt citations against former White House Counsel Harriet Miers and current White House Chief of Staff Joshua Bolten. The next step is for the citations to be taken up by the full House. However, the Associated Press cited a senior Democratic official as saying that this would not happen until after Congress' August recess.

The contempt citations were in response to the defiance by Miers and Bolten of subpoenas issued by the committee last month ordering Miers to testify and requiring the White House to turn over documents relating to the role of White House officials in the purge of the federal prosecutors.

Miers and Bolten acted in accordance with a statement issued by the Bush White House rejecting the congressional subpoenas on the basis of a sweeping assertion of executive privilege. The position of the administration amounts to a rejection of any congressional oversight over the actions of White House officials, past or present.

The vote by the House committee sets the stage for a constitutional confrontation between Congress and the executive branch that normally would end up in the federal courts, unless one side or the other backed down. However, the Bush administration has gone one step further in its assertion of quasi-dictatorial powers, asserting that no US attorney has the power to act on congressional contempt citations against White House officials and initiate legal proceedings, if the White House has invoked executive privilege.

In the conflict between the White House and the Democratic Congress, the latter has sought to avoid a direct confrontation, delaying the issuing of subpoenas for months, while the former has staked out an intransigent and belligerent position.

A great deal of evidence has emerged in the course of the seven-month investigation by the judiciary committees in the House and Senate establishing that the dismissal of the US attorneys, in which Miers played an important role, was part of a concerted drive to pack the ranks of the country's top federal prosecutors with right-wing political operatives prepared to use their prosecutorial powers to serve the partisan aims of the White House and the Republican right.

A major focus of this effort was to use criminal prosecutions to discredit Democratic candidates, undermine voter-registration drives by pro-Democratic organizations, and suppress the votes of minority and working class citizens by means of trumped-up voter fraud charges. In addition, US attorneys who prosecuted Republican legislators on corruption charges were among those removed from office.

In the course of numerous hearings by the judiciary committees in both houses of Congress, Attorney General Alberto Gonzales and other high-level Justice Department officials have been given contradictory testimony and made statements under oath that were demonstrably false. Nevertheless, their testimony and other evidence, including statements from some of the fired prosecutors, have implicated Bush's top political aide, Karl Rove, and pointed to direct involvement by Bush himself.

A report released Tuesday to members of the House Judiciary Committee by its chairman, John Conyers of Michigan, for the first time alleges that administration officials may have committed crimes in firing the attorneys and then covering up the motives for the actions. According to an article in the *Washington Post*, "The report says that Congress's seven-month investigation into the firings raises 'serious concerns' that senior White House and Justice department aides... may have obstructed justice and violated federal statutes that protect civil service employees, prohibit political retaliation against government officials and cover presidential records."

The position of the Bush administration is that White House aides have virtually absolute immunity from testifying before Congress. The president only has to declare executive privilege and all White House aides (current and former) can refuse even to appear before a congressional committee. This is an unprecedented and unconstitutional assertion of executive power.

On Tuesday, the White House made formal its position that the law governing congressional contempt citations does not apply to any official claiming executive privilege. Principal Deputy Assistant Attorney General Brian Benczkowski wrote

that it has been the "long-standing" position, "articulated during administrations of both parties, that the criminal contempt of Congress statute does not apply to the president or presidential subordinates who assert executive privilege."

This is a gross distortion of fact. The position now being asserted by Bush is a repudiation of long-standing precedent and rejection of the constitutional principle of checks and balances between three "co-equal" branches of government—executive, legislative and judicial. At the height of the Watergate crisis, the Nixon administration, mired in criminality as it was, never made such sweeping assertions of executive privilege, allowing, for example, former White House Counsel John Dean to testify before the joint congressional committee investigating the Watergate break-in and ensuing White House cover-up. The position now being asserted by the Bush administration was first advanced in a 1984 memo produced by the Reagan administration, but never litigated in the courts.

The claim of virtually unchecked presidential powers is based on the Bush administration's novel and thoroughly undemocratic doctrine of the "unitary executive," which holds that all executive branch officials, including US attorneys, are extensions of the will of the president and therefore cannot be compelled by Congress to act against a determination within the executive branch.

Ironically, the Bush administration's assertion that US attorneys may not prosecute Miers, Bolten or any other White House officials eventually cited for contempt of Congress underscores the authoritarian motive behind the purge of US attorneys that Congress is investigating, i.e., the drive to transform the federal prosecutors' office into a direct arm of the White House.

The significance of the administration's position on the attorney firing probe was highlighted in testimony by Gonzales before the Senate Judiciary committee on Tuesday. Gonzales refused to answer any questions relating to the attorney scandal, on the grounds that it is an ongoing controversy from which he has recused himself.

Some of the more heated questions directed at Gonzales came from Republican Senator Arlen Specter, the ranking minority member of the Senate committee. Specter asked Gonzales, "Do you think constitutional government in the United States can survive if the president has the unilateral authority to reject congressional inquiries on grounds of executive privilege, and the president then acts to bar the Congress from getting a judicial determination as to whether that executive privilege is properly evoked?" Gonzales refused to answer.

Specter also asked whether Gonzales could appoint a special prosecutor to investigate the matter. Gonzales said that he was recused from making such a decision, but that it could be made by the US solicitor general. It is virtually certain that the Bush administration would not agree to such a move. Specter then suggested that if the solicitor general failed to appoint a special prosecutor, the Senate would move forward with contempt charges in parallel with the House.

For the White House, there is also a broader issue at stake that extends beyond the question of executive privilege. In many different situations, the Bush administration has argued that when an asserted constitutional power of the president (in this case, executive privilege) comes into conflict with a law (in this case, the law governing congressional contempt citations), it is the former that must win out.

A similar argument has been used to justify the administration's warrantless domestic spying programs. There the assertion is that such programs fall within the powers of the president as commander in chief powers, which trump laws such as the Foreign Intelligence Surveillance Act. Gonzales' testimony on Tuesday touched on this question as well.

Gonzales had previously testified under oath that there were no disputes within the administration over the National Security Agency's warrantless domestic spying program, which was leaked to the press and confirmed by Bush in December of 2005. However, subsequent testimony by former deputy attorney general James Comey revealed sharp divisions over such a program—to the point where Gonzales sought to bypass Comey (who was serving as acting attorney general) to get a hospital-confined John Ashcroft, then the attorney general, to drop his opposition to the program.

Asked to reconcile these conflicting accounts, Gonzales asserted that there were no differences over the program acknowledged by Bush, but that there were other "intelligence activities" that caused the dispute. This raises the possibility that the actual domestic spying program established by executive order after 9/11 was far broader than the one Bush was forced to acknowledge in 2005.

Gonzales also said that at a 2004 meeting between the White House and eight congressmen (four Republicans and four Democrats) there had been a bipartisan consensus that the NSA program should continue. Gonzales cited this as justification for his attempt to bypass Comey.

This created an embarrassing situation for the Democrats, since it demonstrated that they were fully aware of the illegal NSA program long before it was revealed in the press. Democratic Senator John Rockefeller, who attended the meeting, said that Gonzales' account was "untruthful." However, Democratic House Speaker Nancy Pelosi, who was also at the meeting, said that a majority agreed that the program should continue (which would necessarily include at least one Democrat), but that she had objected. None of the Democrats, however, disputed the fact that the meeting took place.