

PELOSI TO MUKASEY: TAG. YOU'RE IT.

The Speaker writes letters to the Attorney General.

In accordance with 2 U.S.C. § 194 and the attached House Resolution 979 (adopted on February 14, 2008), I have today sent a certification to the United States Attorney for the District of Columbia, Jeffrey Taylor, advising him of the failure of former White House Counsel, Harriet Miers, to appear, testify and produce documents in compliance with a duly issued subpoena of a subcommittee of the House Judiciary Committee and of the failure of Joshua Bolten, White House Chief of Staff and custodian of White House documents, to produce documents in his custody as required by a duly issued subpoena of the House Judiciary Committee.

Under section 194, Mr. Taylor is now required "to bring the matter before the grand jury for its action." The appropriate grand jury action is a criminal charge for violation of 2 U.S.C. § 192, which provides: "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers . . . willfully makes default . . . shall be deemed guilty of a misdemeanor" and shall be subject to a fine and "imprisonment in a common jail for not less than one month nor more than twelve months."

According to the testimony of your predecessor, former Attorney General Alberto Gonzales, and your recent testimony before the House Judiciary Committee, the Justice Department intends to prevent Mr. Taylor from

complying with the statute and enforcing the contempt citations against Ms. Miers and Mr. Bolten. You claimed that "enforcement by way of contempt of a congressional subpoena is not permitted when the President directs a direct adviser of his... not to appear or when he directs any member of the executive not to produce documents." *Hearing on Oversight of the Dep't of Justice Before the H. Comm. on the Judiciary*, 110th Cong. 87-88 (Feb. 7, 2008). **You purported to base your view on a "long line of authority," but cited no court decision that supports this proposition.**

There is no authority by which persons may wholly ignore a subpoena and fail to appear as directed because a President unilaterally instructs them to do so. Even if a subpoenaed witness intends to assert a privilege in response to questions, the witness is not at liberty to disregard the subpoena and fail to appear at the required time and place. Surely, your Department would not tolerate that type of action if the witness were subpoenaed to a federal grand jury. Short of a formal assertion of executive privilege, which cannot be made in this case, there is no authority that permits a President to advise anyone to ignore a duly issued congressional subpoena for documents.

Your press spokesman has stated that you will "act promptly" to review this matter and reach a final decision. We will appreciate your acting with appropriate dispatch on this important matter. I strongly urge you to reconsider your position and to ensure that our nation is operating under the rule of law and not at presidential whim. If, however, you intend to persist in preventing Mr. Taylor from carrying out his statutory obligation to present

this matter to the grand jury in the District of Columbia, we respectfully request that you inform us of that decision within one week from today, so that the House may proceed with a civil enforcement suit in federal district court. [my emphasis]

Probably, Mukasey will do as he has warned he will do, and refuse to turn this over to (the originally PATRIOT provision-appointed) Jeff Taylor. Probably, this will go no further.

But I do hope Mukasey makes his decision quickly. Given the revelations from the missing emails, it looks like Waxman should be subpoenaing Harriet to find out why she gagged Steven McDevitt to prevent NARA from learning the White House was not complying with the PRA. And John Conyers—currently the gate-keeper on impeachment—is getting mighty cranky of late; I don't want to let that mood slip away.