

United States Senate

WASHINGTON, DC 20510-3905

September 30, 2008

The Honorable Michael Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Mukasey,

The report released jointly yesterday by the Department of Justice's Office of Inspector General (OIG) and Office of Professional Responsibility (OPR), entitled "An Investigation into the Removal of Nine U.S. Attorneys in 2006," contains much that is illuminating about a shameful episode in the Department's history. However, the report states that certain former Administration officials refused to cooperate with OIG and OPR, and that the White House denied investigators access to internal documents relevant to this investigation. (Notably, Harriet Miers related her refusal to be interviewed to her instructions from the White House that she refuse to appear for congressional testimony).

These refusals did not, and could not, stand on executive privilege.

Further, the report disclosed that the Department of Justice's own Office of Legal Counsel (OLC) refused to provide the Department investigators a document in its possession relevant to the investigation.

The OIG/OPR report concluded that the denial of access to an unredacted version of this document "hampered" the investigation, and that lack of cooperation by the executive branch "hindered" and caused "gaps" in the investigation.

As the Attorney General of the United States, this is your Department, and OIG and OPR are your people. You are not a bystander when the White House refuses to cooperate with them. This is a matter of some real significance, and there is not even the fig leaf of executive privilege to excuse the refusal. Worse, a component of the Department itself refused to provide an important document. OLC reports to you.

Please describe any efforts you have made, or intend to make in the future, to stand behind your investigators when the White House, OLC, or any other executive office refuses to cooperate in the OIG/OPR investigation. If you feel under no obligation to support your investigators in their efforts, I would be grateful to know why.

In this regard, I would ask for further clarification of the scope of the powers that you gave Nora Dannehy to conduct further investigation into the U.S. Attorney firings.

The OIG/OPR report specifically requested that “a counsel specially appointed by the Attorney General assess the facts we have uncovered, work with us to conduct further investigation, and ultimately determine whether the evidence demonstrates that any criminal offense was committed”

First, is Ms. Dannehy’s authority limited only to investigation of criminal conduct in connection with the U.S. Attorney firings, or is she authorized, as the OIG/OPR recommendation requests, to “work with” OIG/OPR in their continuing investigation of the firings?

Second, will Ms. Dannehy be precluded by Federal Rule of Criminal Procedure 6(e) from sharing with OIG and OPR, or disclosing to the public, information that she uncovers through any grand jury proceedings? If so, does this not prevent a continuing OIG/OPR investigation from moving forward?

Third, does Ms. Dannehy’s authority include the authority to seek, and if necessary compel by subpoena, cooperation from the White House, the Office of Legal Counsel, and any other executive agency that may not have fully cooperated with the OIG/OPR investigation? If not, why not?

Finally, this further investigation would perhaps not be necessary if you would simply insist on cooperation from the White House, and demand full cooperation by your own Office of Legal Counsel. Other Attorneys General, faced with White House challenges to the proper discharge of the Department’s duties, have not blinked. Please do not blink. It would do lasting harm.

Thank you for your prompt consideration of these concerns.

Sincerely,



Sheldon Whitehouse
United States Senate